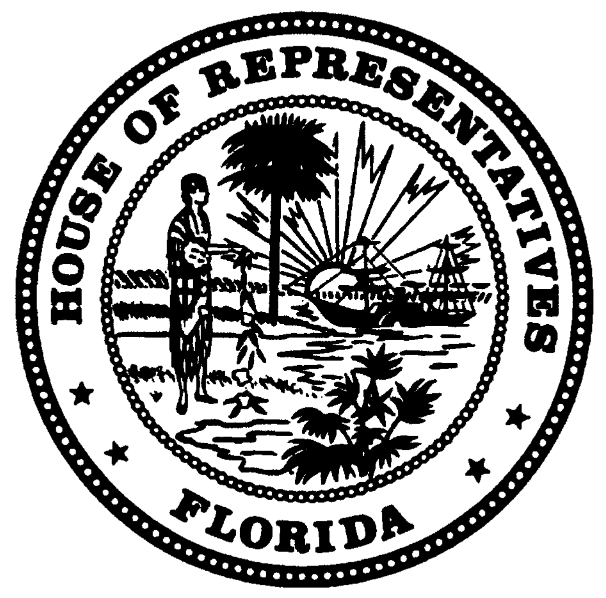

Government Accountability Committee

January 11, 2018
10:30 AM—12:30 PM
Morris Hall (17 HOB)

Meeting Packet

Richard Corcoran
Speaker

Matt Caldwell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Accountability Committee

Start Date and Time:	Thursday, January 11, 2018 10:30 am
End Date and Time:	Thursday, January 11, 2018 12:30 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 53 Coral Reefs by Jacobs
CS/HB 83 Agency Rulemaking by Oversight, Transparency & Administration Subcommittee, Spano
CS/HB 135 Motor Vehicle Registration Applications by Transportation & Infrastructure Subcommittee, Ausley
CS/HM 147 Status of Puerto Rico by Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
HB 215 Autocycles by Payne
HB 273 Public Records by Rodrigues
HB 359 State Investments by Nuñez, Diaz, M.
HB 7011 OGSR/School Food and Nutrition Service Program by Oversight, Transparency & Administration Subcommittee, Davis
HB 7013 OGSR/False Claims by Oversight, Transparency & Administration Subcommittee, Yarborough

Consideration of the following proposed committee bill(s):

PCB GAC 18-01 -- Election Dates for Municipal Office

NOTICE FINALIZED on 01/09/2018 4:21PM by Larson.Lisa

HB 53

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 53 Coral Reefs
SPONSOR(S): Jacobs and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Gregory	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) Government Accountability Committee		Gregory	Williamson

SUMMARY ANALYSIS

Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities run parallel along the coast from the northern border of Biscayne National Park in Miami-Dade County north to the St. Lucie Inlet in Martin County. Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including important commercial fisheries. Further, people use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on the coral reefs.

Coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Globally, 10 percent of all coral reefs are degraded beyond recovery and 30 percent are in critical condition and may die within 10 to 20 years, particularly those near human populations.

The bill establishes the Southeast Florida Coral Reef Ecosystem Conservation Area (conservation area). The conservation area includes the sovereign submerged lands and state waters offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from the St. Lucie Inlet in the north to the northern boundary of the Biscayne National Park in the south.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Coral Reefs

Coral reefs in southeast Florida support a rich and diverse assemblage of stony corals, octocorals, macroalgae, sponges, and fishes. These ecological communities run parallel along the coast from the northern border of Biscayne National Park in Miami-Dade County north to the St. Lucie Inlet in Martin County. Coral reefs are valuable natural resources. They protect coastlines by reducing wave energy from storms and hurricanes. They serve as a source of food and shelter and provide critical habitat for over 6,000 species, including commercially important fisheries. Many medicines, as well as other health and beauty products, are derived from marine plants, algae, and animals found on coral reefs.[1]

People use coral reefs as a resource for recreation, education, scientific research, and public inspiration. Millions of tourists and local residents enjoy scuba diving, snorkeling, and fishing on Florida's coral reefs. These activities provide a source of income for the state and its coastal communities.

Unfortunately, coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. Globally, 10 percent of all coral reefs are degraded beyond recovery and 30 percent are in critical condition and may die within 10 to 20 years, particularly those near human populations.[2]

The United States Coral Reef Task Force identified eight specific and widely accepted threats to coral reefs as being particularly important and tractable:

- Pollution, including eutrophication and sedimentation from intensive land use, chemical loading, oil and chemical spills, marine debris, and invasive nonnative species;
- Overfishing and over-exploitation of coral reef species for recreational and commercial purposes, and the collateral damage and degradation to habitats and ecosystems from fishing activities;
- Destructive fishing practices, such as cyanide and dynamite fishing that can destroy large sections of reef;
- Dredging and shoreline modification in connection with coastal navigation or development;
- Vessel groundings and anchoring that directly destroy corals and reef framework;
- Disease outbreaks that are increasing in frequency and are affecting a greater diversity of coral reef species; and
- Global climate change and associated impacts including increased coral bleaching, mortality, storm frequency, and sea level rise.[3]

Corals are highly sensitive to even small temperature changes and can react through bleaching, reduced growth rates, reduced reproduction, increased vulnerability to diseases, and die-offs. Corals have a mutually beneficial or symbiotic relationship with a type of algae known as zooxanthellae. Zooxanthellae live inside the coral and provide them with energy derived from photosynthesis. The

---

[1] Department of Environmental Protection (DEP), *Coral Reef Conservation Program*, http://www.dep.state.fl.us/coastal/programs/coral/ (last visited March 15, 2017); *Coral Reef Conservation Program 2011-2016 Strategic Plan*, (July 2011), p. 3, available at: http://www.dep.state.fl.us/coastal/programs/coral/pub/CRCP_Strategic_Plan_2011-2016.pdf (last visited September 5, 2017).

[2] U.S. Coral Reef Task Force, *The National Action Plan to Conserve Coral*, p. 3, available at: http://www.coralreef.gov/about/CRTFAxnPlan9.pdf (last visited September 5, 2017).

[3] *Id.*

coral provides the algae with shelter. Corals can tolerate only a relatively narrow temperature range and prefer water between 73-84 degrees. Water temperatures over 86 degrees or under 64 degrees are stressful and are eventually fatal for coral. When the water gets too warm and the coral becomes stressed, they can expel their zooxanthellae, causing bleaching. Although the coral is still alive, just colorless, they will eventually die from starvation if the zooxanthellae do not return.[4]

Recently, massive, region-wide bleaching events have become more common on the Florida Reef Tract. Since 1987, six extensive coral bleaching events have affected the entire Florida Reef Tract. Substantial mass coral mortality occurred during the global bleaching events of 1997/1998 and 2014/2015. Corals at the northern end of their range, such as those found on the Florida Reef Tract, are also vulnerable to cold winter temperatures. A severe cold snap in 2010 resulted in high mortality of certain coral species on shallow-water patch reefs throughout the Florida Reef Tract.[5]

Coral Reef Conservation Program

The Coral Reef Conservation Program (CRCP) within the Florida Coastal Office of the Department of Environmental Protection (DEP) oversees several programs and initiatives to coordinate research and monitoring, develop management strategies, and promote partnerships to protect the coral reefs, hard bottom communities, and associated reef resources of southeast Florida.[6] The CRCP implements and coordinates the following:

- *The Southeast Florida Action Network* – This reporting and response system improves the protection and management of southeast Florida's coral reefs by enhancing marine debris clean-up efforts, increasing response to vessel groundings and anchor damage, and providing early detection of potentially harmful biological disturbances.[7]
- *The Southeast Florida Coral Reef Initiative (SEFCRI)* – This program identifies and implements priority action needed to reduce key threats to coral reef resources in southeast Florida using a local action strategy for collaborative action among government and non-governmental partners.[8]
- *The Southeast Florida's Marine Debris Reporting and Removal Program* – Through a partnership with DEP, the Florida Fish and Wildlife Conservation Commission (FWC) and the Palm Beach County Reef Rescue, this program encourages local divers and dive shops to report marine debris. The partnership organizes reef clean-up events to remove the debris.[9]
- *The Reef Injury Prevention and Response Program* – This program leads response to, and management of, coral reef and hard bottom injuries resulting from vessel impacts such as grounding, anchoring, and cable drag events.[10] Section 403.93345, F.S., otherwise known as the Florida Coral Reef Protection Act, requires responsible parties to notify DEP when they run their vessel aground, strike, or otherwise damage coral reefs. The responsible party must remove the vessel and work with DEP to assess the damage and restore the reef.[11] DEP may require the responsible party to pay the cost of assessment and restoration, as well as pay a fine.[12]
- *The Florida Reef Resilience Program (FRRP)* – The FRRP addresses climate change and coral reefs. Reef managers, scientists, conservation organizations, and reef users across South

---

[4] Fish and Wildlife Conservation Commission (FWC), *Long Term Temperature Monitoring*, http://myfwc.com/research/habitat/coral/cremp/cremp-temp-monitoring/ (last visited September 5, 2017).
[5] *Id.*
[6] DEP, *Coral Reef Conservation Program*, http://www.dep.state.fl.us/coastal/programs/coral/ (last visited September 5, 2017).
[7] DEP, *Southeast Florida Action Network*, http://www.dep.state.fl.us/coastal/programs/coral/seafan.htm (last visited September 5, 2017).
[8] SEFCRI, *What is SEFCRI?*, http://southeastfloridareefs.net/about-us/what-is-sefcri/ (last visited September 5, 2017).
[9] DEP, *Southeast Florida's Marine Debris Reporting and Removal Program*, http://www.dep.state.fl.us/coastal/programs/coral/debris1.htm (last visited September 5, 2017).
[10] DEP, *Reef Injury Prevention and Response Program*, http://www.dep.state.fl.us/coastal/programs/coral/ripr.htm (last visited September 5, 2017).
[11] Section 403.93345(5), F.S.
[12] Sections 403.93345(6), (7), and (8), F.S.

Florida have developed a *Climate Change Action Plan for the Florida Reef System (2010-2015)* (Action Plan). The goals of the Action Plan are to increase coral reef resilience to climate change impacts through active management of local reef impacts; enhance communication and awareness of climate change impacts on coral reefs and reef users; and conduct targeted research to increase understanding of climate change impacts and develop new intervention measures.[13]

- *The Southeast Marine Event Response Program* – This program responds to potentially harmful biological disturbances along the northern third of the Florida Reef Tract from the northern border of Biscayne National Park in Miami-Dade County to the St. Lucie Inlet in Martin County. Upon notification of an event such as harmful algal blooms, fish kills, coral bleaching, or diseases, DEP coordinates with regional partners to schedule initial site assessments, implement event response protocols, and analyze samples, where possible and appropriate.[14]
- *The Southeast Florida Fisheries-Independent Monitoring Program* – This program builds partnerships and obtains funding to implement fisheries-independent monitoring.[15] Fisheries-independent monitoring is a system-wide approach that evaluates marine communities and the populations of fish and invertebrate species that comprise them. Fisheries-independent monitoring also investigates habitat conditions for purposes of learning more about system-wide trends.[16]

FWC also plays a role in protecting Florida's coral reefs. Through the Coral Reef Evaluation and Monitoring Project (CREMP), FWC has monitored the condition of coral reef and hard bottom habitats annually throughout the Florida Keys since 1996, southeast Florida since 2003, and the Dry Tortugas since 2004. The CREMP was able to document the temporal changes that occurred in recent years.[17]

Coral Reef Disease Water Quality Monitoring

During the 2017 session, DEP received $1,000,000 in nonrecurring funds for the Coral Reef Disease Water Quality Monitoring Program.[18] The intended use of the funds included high resolution monthly water quality sampling throughout the northern Florida Reef Tract; the purchase, installation, and maintenance of Land/Ocean Biogeochemical Observatories, offshore salinity and temperature sensors, acoustic fish stations; laboratory analyses; data storage and processing; reporting and scientific expertise; coral tissue sampling; regular report writing; and the creation of a public outreach and education program.[19] The recommendations from the Our Florida Reefs program and the Southeast Florida Intergovernmental Coastal Ocean Task Force are the basis for these activities.[20]

---

[13] DEP, *Climate Change and Coral Reefs*, http://www.dep.state.fl.us/coastal/programs/coral/climate_change.htm (last visited September 5, 2017).
[14] DEP, *Southeast Marine Event Response Program*, http://www.dep.state.fl.us/coastal/programs/coral/event_response.htm (last visited September 5, 2017).
[15] DEP, *Southeast Florida Fisheries-Independent Monitoring Program*, http://www.dep.state.fl.us/coastal/programs/coral/fisheries-independent.htm (last visited September 5, 2017).
[16] Sarasota County Wateratlas, *Fisheries Independent Monitoring*, http://www.sarasota.wateratlas.usf.edu/shared/learnmore.asp?toolsection=lm_fishindep (last visited September 5, 2017).
[17] FWC, *Coral Reef Evaluation and Monitoring Project (CREMP)*, http://myfwc.com/research/habitat/coral/cremp/ (last visited September 5, 2017).
[18] Chapter 2017-70, specific appropriation 1708, Laws of Fla.
[19] Second Revised Meeting Packet Part 4 & 5, p. 128, Agriculture and Natural Resources Appropriations Subcommittee, March 21, 2017, available at: http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2893&Session=2017&DocumentType=Meeting%20Packets&FileName=anr%203-21-17%202nd%20REVISED.pdf.
[20] *Id.*; Our Florida Reefs, *Recommended Management Actions*, http://ourfloridareefs.org/rmacomment/ (last visited September 5, 2017); Broward County, *Southeast Florida Intergovernmental Coastal Ocean Task Force Final Recommendation Report*, http://cragenda.broward.org/docs/2016/CCCM/20161206_525/23351_Exhibit%201%20-%20COTF%20Report.pdf p. 31 (last visited September 5, 2017).

EFFECT OF THE PROPOSED CHANGES

The bill establishes the Southeast Florida Coral Reef Ecosystem Conservation Area (conservation area). The conservation area includes the sovereign submerged lands[21] and state waters[22] offshore of Broward, Martin, Miami-Dade, and Palm Beach Counties from St. Lucie Inlet in the north to the northern boundary of the Biscayne National Park in the south.[23]

B. SECTION DIRECTORY:

Section 1. Creates the Southeast Florida Coral Reef Ecosystem Conservation Area.

Section 2. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By making the designated coral reef ecosystem a conservation area, the bill may enhance the ability for the Southeast Florida Coral Reef Ecosystem Conservation Area to receive grant funding.

---

[21] "Sovereignty submerged lands" means those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and that have not been conveyed or alienated. Sovereignty submerged lands includes all submerged lands title to which is held by the Board of Trustees of the Internal Improvement Trust Fund. Rule 18-21.003(61), F.A.C.

[22] Section 373.019(22), F.S., defines "water" or "waters in the state" as any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

[23] Florida's seaward boundary extends three nautical miles in the Atlantic; Fla. Const. art. II, s. 1.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to coral reefs; establishing the
3 Southeast Florida Coral Reef Ecosystem Conservation
4 Area; providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. There is established the Southeast Florida
9 Coral Reef Ecosystem Conservation Area. The conservation area
10 shall consist of the sovereignty submerged lands and state
11 waters offshore of Broward, Martin, Miami-Dade, and Palm Beach
12 Counties from the St. Lucie Inlet to the northern boundary of
13 the Biscayne National Park.
14 Section 2. This act shall take effect July 1, 2018.

CS/HB 83

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 83 Agency Rulemaking
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N, As CS	Toliver	Harrington
2) Transportation & Tourism Appropriations Subcommittee	14 Y, 0 N	Cobb	Davis
3) Government Accountability Committee		Toliver	Williamson

SUMMARY ANALYSIS

A statement of estimated regulatory costs (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule, as well as the potential impact on agencies and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. However, a SERC is mandatory if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than $200,000 within one year after implementation.

The bill requires an agency to prepare a SERC before the adoption or amendment of any rule other than an emergency rule. Additionally, the bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the adjudicating body.

The bill requires the Department of State (department) to include on the Florida Administrative Register website the agency website addresses where each agency's SERCs can be viewed in their entirety. An agency must include in its notice of intended action the agency website address where SERCs can be viewed in their entirety. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the Florida Administrative Register website.

The bill also removes the requirement that the agency head approve certain rulemaking notices.

The department states the bill will not result in a fiscal impact to its operations; however, to the extent that state agencies must complete additional SERCs, the bill may have a negative, though likely insignificant, fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Rulemaking

The Administrative Procedure Act[1] sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[2] Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"[3] rules. Agencies do not have the discretion in and of themselves to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[5] The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[6]

An agency begins the formal rulemaking process, upon approval of the agency head, by filing a notice of the proposed rule.[7] The notice is published by the Department of State (department) in the Florida Administrative Register[8] and provides certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared, and how a party may request a public hearing on the proposed rule.[9] Although the notice includes a summary of the SERC, if prepared, publication of the SERC is not required.

Statement of Estimated Regulatory Costs

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[10] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[11] However, a SERC is required if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[12]

A SERC must include:

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[13]

---

[1] Chapter 120, F.S.

[2] Section 120.52(16), F.S.

[3] Section 120.52(17), F.S.

[4] Section 120.54(1)(a), F.S.

[5] Sections 120.52(8) and 120.536(1), F.S.

[6] *Sloban v. Florida Board of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

[7] Section 120.54(3)(a)1., F.S.

[8] Section 120.55(1)(b), F.S.

[9] Section 120.55(1)(b)1. and 2., F.S.

[10] Section 120.541(2), F.S.

[11] Section 120.54(3)(b)1., F.S.

[12] Section 120.54(3)(b)1., F.S.

[13] Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[14]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[15]

Within 21 days after publication of a notice of adoption, amendment, or repeal of a rule a person substantially affected by the proposal may submit to the agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule that substantially accomplishes the objectives of the law being implemented.[16] If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[17] At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to the Joint Administrative Procedures Committee[18] and must provide notice on the agency's website that it is available to the public.[19]

Effect of the Bill

The bill requires an agency to prepare a SERC before the adoption or amendment of any rule other than an emergency rule. Additionally, the bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the adjudicating body.

The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety. The department must include on the Florida Administrative Register website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of intended action the agency website addresses where the SERCs can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the Florida Administrative Register website.

Lastly, the bill removes the requirement that the agency head approve certain rulemaking notices.

B. SECTION DIRECTORY:

Section 1 amends s. 120.54, F.S., relating to rulemaking.

Section 2 amends s. 120.541, F.S., relating to SERCs.

Section 3 provides an effective date of July 1, 2018.

---

[14] Section 120.541(2)(a), F.S.
[15] Section 120.541(3), F.S.
[16] Section 120.541(1)(a), F.S.
[17] Section 120.541(1)(c), F.S.
[18] The Joint Administrative Procedures Committee is a standing committee of the Legislature created for the purpose of maintaining a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process. Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.
[19] Section 120.541(1)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The department states the bill will not result in a fiscal impact to its operations;[20] however, to the extent that state agencies must complete additional SERCs, the bill may have a negative, though likely insignificant, fiscal impact on state government.[21]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 120.56(2)(a), F.S., contains a cross-reference to s. 120.541(1)(d), F.S., which the bill changes to s. 120.541(1)(c), F.S. As such, the cross-reference needs to be corrected to conform to the change made by the bill.

---

[20] Email from the Department of State, April 13, 2017, on file with the Transportation & Tourism Appropriations Subcommittee.

[21] 2018 Agency Bill Analyses from the Department of Business and Professional Regulation, the Agency for State Technology, the Department of Agriculture and Consumer Services, the Department of Juvenile Justice, the Department of State, the Department of Elder Affairs, and the Department of Citrus estimate certain fiscal impacts to their operations. 2018 Agency Bill Analyses for HB 83 on file with the Oversight, Transparency & Administration Subcommittee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 11, 2017, the Oversight, Transparency & Administration Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment made several technical changes to the bill. The amendment:

- Changed the phrase "Joint Administrative Procedures Committee" to "committee" as that is a defined term in s. 120.52(4), F.S.;
- Changed the phrase "Division of Administrative Hearings" to "division" as that is a defined term in s. 120.52(5), F.S.;
- Removed a phrase in s. 120.541(1)(a), F.S., to conform to changes made by the bill;
- Repealed s. 120.541(1)(b), F.S., as the provision was rendered redundant; and
- Changed "Department" to "department" in s. 120.541(6), F.S.

This analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled
2 An act relating to agency rulemaking; amending s.
3 120.54, F.S.; requiring certain notices to include an
4 agency website address for a specified purpose;
5 requiring an agency to prepare a statement of
6 estimated regulatory costs before adopting or amending
7 any rule other than an emergency rule; requiring an
8 agency to prepare a statement of estimated regulatory
9 costs before repealing a rule in certain
10 circumstances; amending s. 120.541, F.S.; conforming
11 provisions to changes made by the act; requiring the
12 Department of State to include on the Florida
13 Administrative Register website the agency website
14 addresses where statements of estimated regulatory
15 costs can be viewed in their entirety; requiring an
16 agency to include in its notice of intended action the
17 agency website address where the statement of
18 estimated regulatory costs can be read in its
19 entirety; requiring an agency to provide a notice of
20 revision when an agency revises a statement of
21 estimated regulatory costs; providing an effective
22 date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Paragraphs (a) and (b) of subsection (3) of
27 section 120.54, Florida Statutes, are amended to read:
28 120.54 Rulemaking.—
29 (3) ADOPTION PROCEDURES.—
30 (a) Notices.—
31 1. Prior to the adoption, amendment, or repeal of any rule
32 other than an emergency rule, an agency~~, upon approval of the~~
33 ~~agency head,~~ shall give notice of its intended action, setting
34 forth a short, plain explanation of the purpose and effect of
35 the proposed action; the full text of the proposed rule or
36 amendment and a summary thereof; a reference to the grant of
37 rulemaking authority pursuant to which the rule is adopted; and
38 a reference to the section or subsection of the Florida Statutes
39 or the Laws of Florida being implemented or interpreted. The
40 notice must include a summary of the agency's statement of the
41 estimated regulatory costs, if one has been prepared, based on
42 the factors set forth in s. 120.541(2); an agency website
43 address where the statement of estimated regulatory costs can be
44 viewed in its entirety; a statement that any person who wishes
45 to provide the agency with information regarding the statement
46 of estimated regulatory costs, or to provide a proposal for a
47 lower cost regulatory alternative as provided by s. 120.541(1),
48 must do so in writing within 21 days after publication of the
49 notice; and a statement as to whether, based on the statement of
50 the estimated regulatory costs or other information expressly

51 relied upon and described by the agency if no statement of
52 regulatory costs is required, the proposed rule is expected to
53 require legislative ratification pursuant to s. 120.541(3). The
54 notice must state the procedure for requesting a public hearing
55 on the proposed rule. Except when the intended action is the
56 repeal of a rule, the notice must include a reference both to
57 the date on which and to the place where the notice of rule
58 development that is required by subsection (2) appeared.
59 2. The notice shall be published in the Florida
60 Administrative Register not less than 28 days prior to the
61 intended action. The proposed rule shall be available for
62 inspection and copying by the public at the time of the
63 publication of notice.
64 3. The notice shall be mailed to all persons named in the
65 proposed rule and to all persons who, at least 14 days prior to
66 such mailing, have made requests of the agency for advance
67 notice of its proceedings. The agency shall also give such
68 notice as is prescribed by rule to those particular classes of
69 persons to whom the intended action is directed.
70 4. The adopting agency shall file with the committee, at
71 least 21 days prior to the proposed adoption date, a copy of
72 each rule it proposes to adopt; a copy of any material
73 incorporated by reference in the rule; a detailed written
74 statement of the facts and circumstances justifying the proposed
75 rule; a copy of any statement of estimated regulatory costs that

76 has been prepared pursuant to s. 120.541; a statement of the
77 extent to which the proposed rule relates to federal standards
78 or rules on the same subject; and the notice required by
79 subparagraph 1.
80 (b) Special matters to be considered in rule adoption.—
81 1. Statement of estimated regulatory costs.—Before the
82 adoption or~~,~~ amendment~~, or repeal~~ of any rule other than an
83 emergency rule, an agency must ~~is encouraged to~~ prepare a
84 statement of estimated regulatory costs of the proposed rule, as
85 provided by s. 120.541. However, an agency is not required to
86 prepare a statement of estimated regulatory costs for a rule
87 repeal unless such repeal would impose a regulatory cost. In any
88 challenge to a rule repeal, such rule repeal must be considered
89 presumptively correct by the committee, in any proceeding before
90 the division, or in any proceeding before a court of competent
91 jurisdiction. ~~However, an agency must prepare a statement of~~
92 ~~estimated regulatory costs of the proposed rule, as provided by~~
93 ~~s. 120.541, if:~~
94 ~~a. The proposed rule will have an adverse impact on small~~
95 ~~business; or~~
96 ~~b. The proposed rule is likely to directly or indirectly~~
97 ~~increase regulatory costs in excess of $200,000 in the aggregate~~
98 ~~in this state within 1 year after the implementation of the~~
99 ~~rule.~~
100 2. Small businesses, small counties, and small cities.—

101 a. Each agency, before the adoption, amendment, or repeal
102 of a rule, shall consider the impact of the rule on small
103 businesses as defined by s. 288.703 and the impact of the rule
104 on small counties or small cities as defined by s. 120.52.
105 Whenever practicable, an agency shall tier its rules to reduce
106 disproportionate impacts on small businesses, small counties, or
107 small cities to avoid regulating small businesses, small
108 counties, or small cities that do not contribute significantly
109 to the problem the rule is designed to address. An agency may
110 define "small business" to include businesses employing more
111 than 200 persons, may define "small county" to include those
112 with populations of more than 75,000, and may define "small
113 city" to include those with populations of more than 10,000, if
114 it finds that such a definition is necessary to adapt a rule to
115 the needs and problems of small businesses, small counties, or
116 small cities. The agency shall consider each of the following
117 methods for reducing the impact of the proposed rule on small
118 businesses, small counties, and small cities, or any combination
119 of these entities:
120 (I) Establishing less stringent compliance or reporting
121 requirements in the rule.
122 (II) Establishing less stringent schedules or deadlines in
123 the rule for compliance or reporting requirements.
124 (III) Consolidating or simplifying the rule's compliance
125 or reporting requirements.

126 (IV) Establishing performance standards or best management
127 practices to replace design or operational standards in the
128 rule.
129 (V) Exempting small businesses, small counties, or small
130 cities from any or all requirements of the rule.
131 b.(I) If the agency determines that the proposed action
132 will affect small businesses as defined by the agency as
133 provided in sub-subparagraph a., the agency shall send written
134 notice of the rule to the rules ombudsman in the Executive
135 Office of the Governor at least 28 days before the intended
136 action.
137 (II) Each agency shall adopt those regulatory alternatives
138 offered by the rules ombudsman in the Executive Office of the
139 Governor and provided to the agency no later than 21 days after
140 the rules ombudsman's receipt of the written notice of the rule
141 which it finds are feasible and consistent with the stated
142 objectives of the proposed rule and which would reduce the
143 impact on small businesses. When regulatory alternatives are
144 offered by the rules ombudsman in the Executive Office of the
145 Governor, the 90-day period for filing the rule in subparagraph
146 (e)2. is extended for a period of 21 days.
147 (III) If an agency does not adopt all alternatives offered
148 pursuant to this sub-subparagraph, it shall, before rule
149 adoption or amendment and pursuant to subparagraph (d)1., file a
150 detailed written statement with the committee explaining the

151 reasons for failure to adopt such alternatives. Within 3 working
152 days after the filing of such notice, the agency shall send a
153 copy of such notice to the rules ombudsman in the Executive
154 Office of the Governor.
155 Section 2. Subsection (1) of section 120.541, Florida
156 Statutes, is amended, and subsection (6) is added to that
157 section, to read:
158 120.541 Statement of estimated regulatory costs.—
159 (1)(a) Within 21 days after publication of the notice
160 required under s. 120.54(3)(a), a substantially affected person
161 may submit to an agency a good faith written proposal for a
162 lower cost regulatory alternative to a proposed rule which
163 substantially accomplishes the objectives of the law being
164 implemented. The proposal may include the alternative of not
165 adopting any rule if the proposal explains how the lower costs
166 and objectives of the law will be achieved by not adopting any
167 rule. If such a proposal is submitted, the 90-day period for
168 filing the rule is extended 21 days. Upon the submission of the
169 lower cost regulatory alternative, the agency shall ~~prepare a~~
170 ~~statement of estimated regulatory costs as provided in~~
171 ~~subsection (2), or shall~~ revise its prior statement of estimated
172 regulatory costs~~,~~ and either adopt the alternative or provide a
173 statement of the reasons for rejecting the alternative in favor
174 of the proposed rule.

175 ~~(b) If a proposed rule will have an adverse impact on~~
176 ~~small business or if the proposed rule is likely to directly or~~
177 ~~indirectly increase regulatory costs in excess of $200,000 in~~
178 ~~the aggregate within 1 year after the implementation of the~~
179 ~~rule, the agency shall prepare a statement of estimated~~
180 ~~regulatory costs as required by s. 120.54(3)(b).~~
181 (b) ~~(c)~~ The agency shall revise a statement of estimated
182 regulatory costs if any change to the rule made under s.
183 120.54(3)(d) increases the regulatory costs of the rule.
184 (c) ~~(d)~~ At least 21 days before filing the rule for
185 adoption, an agency that is required to revise a statement of
186 estimated regulatory costs shall provide the statement to the
187 person who submitted the lower cost regulatory alternative and
188 to the committee and shall provide notice on the agency's
189 website that it is available to the public.
190 (d) ~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
191 agency to prepare a statement of estimated regulatory costs or
192 to respond to a written lower cost regulatory alternative as
193 provided in this subsection is a material failure to follow the
194 applicable rulemaking procedures or requirements set forth in
195 this chapter.
196 (e) ~~(f)~~ An agency's failure to prepare a statement of
197 estimated regulatory costs or to respond to a written lower cost
198 regulatory alternative may not be raised in a proceeding

199 challenging the validity of a rule pursuant to s. 120.52(8)(a)
200 unless:
201 1. Raised in a petition filed no later than 1 year after
202 the effective date of the rule; and
203 2. Raised by a person whose substantial interests are
204 affected by the rule's regulatory costs.
205 (f) ~~(g)~~ A rule that is challenged pursuant to s.
206 120.52(8)(f) may not be declared invalid unless:
207 1. The issue is raised in an administrative proceeding
208 within 1 year after the effective date of the rule;
209 2. The challenge is to the agency's rejection of a lower
210 cost regulatory alternative offered under paragraph (a) or s.
211 120.54(3)(b)2.b.; and
212 3. The substantial interests of the person challenging the
213 rule are materially affected by the rejection.
214 (6) The Department of State shall include on the Florida
215 Administrative Register website the agency website addresses
216 where statements of estimated regulatory costs can be viewed in
217 their entirety.
218 (a) An agency that prepares a statement of estimated
219 regulatory costs must provide, as part of the notice required
220 under s. 120.54(3)(a), the agency website address where the
221 statement of estimated regulatory costs can be read in its
222 entirety to the department for publication in the Florida
223 Administrative Register.

224 (b) An agency that revises a statement of estimated
225 regulatory costs must provide a notice that a revision has been
226 made and an agency website address where the revision can be
227 viewed for publication in the Florida Administrative Register.
228 Section 3. This act shall take effect July 1, 2018.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Government Accountability Committee

Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (b) of subsection (3) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) Notices.—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency~~, upon approval of the agency head,~~ shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or

17 amendment and a summary thereof; a reference to the grant of
18 rulemaking authority pursuant to which the rule is adopted; and
19 a reference to the section or subsection of the Florida Statutes
20 or the Laws of Florida being implemented or interpreted. The
21 notice must include a summary of the agency's statement of the
22 estimated regulatory costs~~, if one has been prepared,~~ based on
23 the factors set forth in s. 120.541(2); an agency website
24 address where the statement of estimated regulatory costs can be
25 viewed in its entirety; a statement that any person who wishes
26 to provide the agency with information regarding the statement
27 of estimated regulatory costs, or to provide a proposal for a
28 lower cost regulatory alternative as provided by s. 120.541(1),
29 must do so in writing within 21 days after publication of the
30 notice; and a statement as to whether, based on the statement of
31 the estimated regulatory costs ~~or other information expressly~~
32 ~~relied upon and described by the agency if no statement of~~
33 ~~regulatory costs is required~~, the proposed rule is expected to
34 require legislative ratification pursuant to s. 120.541(3). The
35 notice must state the procedure for requesting a public hearing
36 on the proposed rule. Except when the intended action is the
37 repeal of a rule, the notice must include a reference both to
38 the date on which and to the place where the notice of rule
39 development that is required by subsection (2) appeared.
40 2. The notice shall be published in the Florida
41 Administrative Register not less than 28 days prior to the

42 intended action. The proposed rule shall be available for
43 inspection and copying by the public at the time of the
44 publication of notice.
45 3. The notice shall be mailed to all persons named in the
46 proposed rule and to all persons who, at least 14 days prior to
47 such mailing, have made requests of the agency for advance
48 notice of its proceedings. The agency shall also give such
49 notice as is prescribed by rule to those particular classes of
50 persons to whom the intended action is directed.
51 4. The adopting agency shall file with the committee, at
52 least 21 days prior to the proposed adoption date, a copy of
53 each rule it proposes to adopt; a copy of any material
54 incorporated by reference in the rule; a detailed written
55 statement of the facts and circumstances justifying the proposed
56 rule; a copy of the ~~any~~ statement of estimated regulatory costs
57 ~~that has been~~ prepared pursuant to s. 120.541; a statement of
58 the extent to which the proposed rule relates to federal
59 standards or rules on the same subject; and the notice required
60 by subparagraph 1.
61 (b) Special matters to be considered in rule adoption.—
62 1. Statement of estimated regulatory costs.—Before the
63 adoption or~~,~~ amendment~~, or repeal~~ of any rule, other than an
64 emergency rule, an agency must ~~is encouraged to~~ prepare a
65 statement of estimated regulatory costs of the proposed rule, as
66 provided by s. 120.541. However, an agency is not required to

67 prepare a statement of estimated regulatory costs for a rule
68 repeal unless such repeal would impose a regulatory cost. In any
69 challenge to a rule repeal, such rule repeal must be considered
70 presumptively correct by the committee, in any proceeding before
71 the division, or in any proceeding before a court of competent
72 jurisdiction. ~~However, an agency must prepare a statement of~~
73 ~~estimated regulatory costs of the proposed rule, as provided by~~
74 ~~s. 120.541, if:~~
75 ~~a. The proposed rule will have an adverse impact on small~~
76 ~~business; or~~
77 ~~b. The proposed rule is likely to directly or indirectly~~
78 ~~increase regulatory costs in excess of $200,000 in the aggregate~~
79 ~~in this state within 1 year after the implementation of the~~
80 ~~rule.~~
81 2. Small businesses, small counties, and small cities.—
82 a. Each agency, before the adoption, amendment, or repeal
83 of a rule, shall consider the impact of the rule on small
84 businesses as defined by s. 288.703 and the impact of the rule
85 on small counties or small cities as defined by s. 120.52.
86 Whenever practicable, an agency shall tier its rules to reduce
87 disproportionate impacts on small businesses, small counties, or
88 small cities to avoid regulating small businesses, small
89 counties, or small cities that do not contribute significantly
90 to the problem the rule is designed to address. An agency may
91 define "small business" to include businesses employing more

92 than 200 persons, may define "small county" to include those
93 with populations of more than 75,000, and may define "small
94 city" to include those with populations of more than 10,000, if
95 it finds that such a definition is necessary to adapt a rule to
96 the needs and problems of small businesses, small counties, or
97 small cities. The agency shall consider each of the following
98 methods for reducing the impact of the proposed rule on small
99 businesses, small counties, and small cities, or any combination
100 of these entities:
101 (I) Establishing less stringent compliance or reporting
102 requirements in the rule.
103 (II) Establishing less stringent schedules or deadlines in
104 the rule for compliance or reporting requirements.
105 (III) Consolidating or simplifying the rule's compliance
106 or reporting requirements.
107 (IV) Establishing performance standards or best management
108 practices to replace design or operational standards in the
109 rule.
110 (V) Exempting small businesses, small counties, or small
111 cities from any or all requirements of the rule.
112 b.(I) If the agency determines that the proposed action
113 will affect small businesses as defined by the agency as
114 provided in sub-subparagraph a., the agency shall send written
115 notice of the rule to the rules ombudsman in the Executive

116 Office of the Governor at least 28 days before the intended
117 action.
118 (II) Each agency shall adopt those regulatory alternatives
119 offered by the rules ombudsman in the Executive Office of the
120 Governor and provided to the agency no later than 21 days after
121 the rules ombudsman's receipt of the written notice of the rule
122 which it finds are feasible and consistent with the stated
123 objectives of the proposed rule and which would reduce the
124 impact on small businesses. When regulatory alternatives are
125 offered by the rules ombudsman in the Executive Office of the
126 Governor, the 90-day period for filing the rule in subparagraph
127 (e)2. is extended for a period of 21 days.
128 (III) If an agency does not adopt all alternatives offered
129 pursuant to this sub-subparagraph, it shall, before rule
130 adoption or amendment and pursuant to subparagraph (d)1., file a
131 detailed written statement with the committee explaining the
132 reasons for failure to adopt such alternatives. Within 3 working
133 days after the filing of such notice, the agency shall send a
134 copy of such notice to the rules ombudsman in the Executive
135 Office of the Governor.
136 Section 2. Subsections (1) and (2) of section 120.541,
137 Florida Statutes, are amended, and subsection (6) is added to
138 that section, to read:
139 120.541 Statement of estimated regulatory costs.—

140 (1)(a) Within 21 days after publication of the notice
141 required under s. 120.54(3)(a), a substantially affected person
142 may submit to an agency a good faith written proposal for a
143 lower cost regulatory alternative to a proposed rule which
144 substantially accomplishes the objectives of the law being
145 implemented. The proposal may include the alternative of not
146 adopting any rule if the proposal explains how the lower costs
147 and objectives of the law will be achieved by not adopting any
148 rule. If such a proposal is submitted, the 90-day period for
149 filing the rule is extended 21 days. Upon the submission of the
150 lower cost regulatory alternative, the agency shall ~~prepare a~~
151 ~~statement of estimated regulatory costs as provided in~~
152 ~~subsection (2), or shall~~ revise its prior statement of estimated
153 regulatory costs~~,~~ and either adopt the alternative or provide a
154 statement of the reasons for rejecting the alternative in favor
155 of the proposed rule.
156 ~~(b) If a proposed rule will have an adverse impact on~~
157 ~~small business or if the proposed rule is likely to directly or~~
158 ~~indirectly increase regulatory costs in excess of $200,000 in~~
159 ~~the aggregate within 1 year after the implementation of the~~
160 ~~rule, the agency shall prepare a statement of estimated~~
161 ~~regulatory costs as required by s. 120.54(3)(b).~~
162 <u>(b)</u>~~(c)~~ The agency shall revise a statement of estimated
163 regulatory costs if any change to the rule made under s.
164 120.54(3)(d) increases the regulatory costs of the rule.

165 (c) ~~(d)~~ At least 21 days before filing the rule for
166 adoption, an agency that is required to revise a statement of
167 estimated regulatory costs shall provide the statement to the
168 person who submitted the lower cost regulatory alternative and
169 to the committee and shall provide notice on the agency's
170 website that it is available to the public.
171 (d) ~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
172 agency to prepare a statement of estimated regulatory costs or
173 to respond to a written lower cost regulatory alternative as
174 provided in this subsection is a material failure to follow the
175 applicable rulemaking procedures or requirements set forth in
176 this chapter.
177 (e) ~~(f)~~ An agency's failure to prepare a statement of
178 estimated regulatory costs or to respond to a written lower cost
179 regulatory alternative may not be raised in a proceeding
180 challenging the validity of a rule pursuant to s. 120.52(8)(a)
181 unless:
182 1. Raised in a petition filed no later than 1 year after
183 the effective date of the rule; and
184 2. Raised by a person whose substantial interests are
185 affected by the rule's regulatory costs.
186 (f) ~~(g)~~ A rule that is challenged pursuant to s.
187 120.52(8)(f) may not be declared invalid unless:
188 1. The issue is raised in an administrative proceeding
189 within 1 year after the effective date of the rule;

190 2. The challenge is to the agency's rejection of a lower
191 cost regulatory alternative offered under paragraph (a) or s.
192 120.54(3)(b)2.b.; and
193 3. The substantial interests of the person challenging the
194 rule are materially affected by the rejection.
195 (2) A statement of estimated regulatory costs shall
196 include:
197 (g) In the ~~statement or~~ revised statement~~, whichever~~
198 ~~applies,~~ a description of any regulatory alternatives submitted
199 under paragraph (1)(a) and a statement adopting the alternative
200 or a statement of the reasons for rejecting the alternative in
201 favor of the proposed rule.
202 <u>(6) The Department of State shall include on the Florida</u>
203 <u>Administrative Register website the agency website addresses</u>
204 <u>where statements of estimated regulatory costs can be viewed in</u>
205 <u>their entirety.</u>
206 <u>(a) An agency that prepares a statement of estimated</u>
207 <u>regulatory costs must provide, as part of the notice required</u>
208 <u>under s. 120.54(3)(a), the agency website address where the</u>
209 <u>statement of estimated regulatory costs can be read in its</u>
210 <u>entirety to the department for publication in the Florida</u>
211 <u>Administrative Register.</u>
212 <u>(b) An agency that revises a statement of estimated</u>
213 <u>regulatory costs must provide a notice that a revision has been</u>
214 <u>made that includes the agency website address where the revision</u>

215 can be viewed in its entirety to the department for publication
216 in the Florida Administrative Register.
217 Section 3. Subsection (6) of section 120.55, Florida
218 Statutes, is amended to read:
219 120.55 Publication.—
220 (6) Any publication of a proposed rule promulgated by an
221 agency, whether published in the Florida Administrative Register
222 or elsewhere, shall include, along with the rule, the name of
223 the person or persons originating such rule., the name of the
224 agency head who approved the rule, and the date upon which the
225 rule was approved.
226 Section 4. Paragraph (a) of subsection (2) of section
227 120.56, Florida Statutes, is amended to read:
228 120.56 Challenges to rules.—
229 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—
230 (a) A petition alleging the invalidity of a proposed rule
231 shall be filed within 21 days after the date of publication of
232 the notice required by s. 120.54(3)(a); within 10 days after the
233 final public hearing is held on the proposed rule as provided by
234 s. 120.54(3)(e)2.; within 20 days after the statement of
235 estimated regulatory costs or revised statement of estimated
236 regulatory costs, if applicable, has been prepared and made
237 available as provided in s. 120.541(1)(c)(d); or within 20 days
238 after the date of publication of the notice required by s.
239 120.54(3)(d). The petitioner has the burden to prove by a

240 preponderance of the evidence that the petitioner would be
241 substantially affected by the proposed rule. The agency then has
242 the burden to prove by a preponderance of the evidence that the
243 proposed rule is not an invalid exercise of delegated
244 legislative authority as to the objections raised. A person who
245 is not substantially affected by the proposed rule as initially
246 noticed, but who is substantially affected by the rule as a
247 result of a change, may challenge any provision of the resulting
248 proposed rule.
249 Section 5. This act shall take effect on July 1, 2018
250
251 ---
252 **T I T L E A M E N D M E N T**
253 Remove everything before the enacting clause and insert:
254 An act relating to agency rulemaking; amending s. 120.54, F.S.;
255 requiring certain notices to include an agency website address
256 for a specified purpose; requiring an agency to prepare a
257 statement of estimated regulatory costs before adopting or
258 amending any rule other than an emergency rule; requiring an
259 agency to prepare a statement of estimated regulatory costs
260 before repealing a rule in certain circumstances; amending s.
261 120.541, F.S.; conforming provisions to changes made by the act;
262 requiring the Department of State to include on the Florida
263 Administrative Register website the agency website addresses
264 where statements of estimated regulatory costs can be viewed in

265 their entirety; requiring an agency to include in its notice of
266 intended action the agency website address where the statement
267 of estimated regulatory costs can be read in its entirety;
268 requiring an agency to provide a notice of revision when an
269 agency revises a statement of estimated regulatory costs;
270 amending ss. 120.55 and 120.56, F.S.; conforming provisions to
271 changes made by the act; providing an effective date.

CS/HB 135

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Motor Vehicle Registration Applications
SPONSOR(S): Transportation & Infrastructure Subcommittee; Ausley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N	Cobb	Davis
3) Government Accountability Committee		Roth	Williamson

SUMMARY ANALYSIS

An individual who is deaf or hard of hearing may add the international symbol for the Deaf and Hard of Hearing to his or her driver license or identification card upon providing sufficient proof that he or she is deaf or hard of hearing and paying an additional fee. In August 2017, the Department of Highway Safety and Motor Vehicles (DHSMV) introduced driver licenses and identification cards with the Deaf and Hard of Hearing designation in selected counties and will provide for statewide distribution by January 2018.

The bill requires DHSMV to include language on the motor vehicle registration application that allows a deaf or hard of hearing applicant to indicate voluntarily that he or she is deaf or hard of hearing. This notation will be included through the Driver and Vehicle Information Database and available through the Florida Crime Information Center system.

DHSMV estimates that approximately 579 programming hours, or the equivalent of $23,745 in FTE and contracted resources, will be required to implement the bill. These costs can be absorbed within existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Motor Vehicle Registration

The motor vehicle registration process is set out in s. 320.02, F.S., and incorporated in form HSMV 82040.[1] Applicants must provide the street address of the owner's permanent residence and a valid driver license, identification card, or passport.[2] Any vehicle registered outside the state must be accompanied by a sworn affidavit from the seller and purchaser verifying the vehicle identification number (VIN), or a copy of the outside state's departmental form indicating that the vehicle has been physically inspected and the VIN verified.[3] The owner of any motor vehicle registered in the state must notify the Department of Highway Safety and Motor Vehicles (DHSMV) in writing of any change of address within 30 days of such change.[4] Additionally, the owner of the vehicle must provide proof that personal injury protection benefits, property damage liability coverage, bodily injury or death coverage, and combined bodily liability insurance and property damage liability insurance have been purchased.[5]

For the majority of motor vehicles, the registration period begins the first day of the birth month of the owner and ends the last day of the month immediately preceding the owner's birth month the next year.[6] The renewal period is the 30-day period ending at midnight on the vehicle owner's date of birth.[7] For vehicles weighing over a certain amount, the registration period must be a period of 12 months beginning in a month designated by DHSMV and ending on the last day of the 12th month.[8] For a vehicle subject to this registration period, the renewal period is the last month of the registration period.[9] However, there is an extended registration period where a motor vehicle registration is valid for 24 months.[10]

Florida's Implementation of the International Symbol for the Deaf and Hard of Hearing

An individual who is deaf or hard of hearing may add the international symbol for the Deaf and Hard of Hearing to his or her driver license[11] or identification card[12] upon providing sufficient proof that he or she is deaf or hard of hearing and paying an additional fee. An individual who wishes to add the designation when issued an original or renewal driver license or identification card must pay an additional $1 fee. An individual who surrenders and replaces his or her driver license or identification card before its expiration date for the purpose of adding the international symbol for the Deaf and Hard of Hearing must pay an additional $2 fee to be deposited into the Highway Safety Operating Trust Fund. If the applicant is not conducting any other transaction affecting the driver license or identification card, the standard $25 replacement fee is waived.

In August 2017, DHSMV introduced driver licenses and identification cards with the Deaf and Hard of Hearing designation in selected counties and will provide for statewide distribution by January 2018.[13]

---

[1] Florida Department of Highway Safety and Motor Vehicles Form HSMV 82040, available at https://www.flhsmv.gov/pdf/forms/82040.pdf (last visited January 9, 2018).
[2] Section 320.02(2)(a), F.S.
[3] Section 320.02(3), F.S.
[4] Section 320.02(4), F.S.
[5] Section 320.02(5)(a), F.S.
[6] Section 320.055(1)(a), F.S.
[7] Section 320.055(1)(a), F.S.
[8] Section 320.055(5), F.S.
[9] Section 320.055(5), F.S.
[10] Sections 320.055(1)(b), 320.01(19)(b), F.S.
[11] Section 322.14, F.S.
[12] Section 322.051, F.S.
[13] Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: implementation of deaf and hard of hearing symbol on driver license (October 26, 2017).

Driver and Vehicle Information Database (DAVID)
DAVID provides easy-to-use, secure web-based access to driver license identity information, driver license transactions, driver license records, and vehicle titles and registrations.[14] In order for an agency to gain access to the information in DAVID, DHSMV and the requesting agency must enter into a Memorandum of Understanding (MOU).[15] The MOU establishes the purposes for and conditions of electronic access to DAVID.[16] DAVID may only be used by law enforcement for official law enforcement purposes such as traffic stops, investigations, missing persons, automobile crashes, and natural disasters.[17] As of 2017, there were 68,790 active DAVID users.[18]

Florida Crime Information Center (FCIC) System
The FCIC system is a database that provides criminal justice agencies with access to federal and state criminal justice information.[19] The FCIC system is used for rapid communications such as:

- Be On the Look Out (BOLO) notices, used to notify the public and law enforcement when assistance is needed finding a suspect.
- All Points Bulletin, used as a broadcast alert from one police station to all others in a particular area or state with instructions to arrest a suspect.
- Florida Administrative Message, law enforcement related messages used when the sender and recipient are both within the State of Florida.[20]

Additionally, the FCIC system provides connectivity to DHSMV and the National Crime Information Center (NCIC) and contains additional "Hot Files" with the most heavily used types of criminal justice information not stored in NCIC.[21] Some of the information in Hot Files include abandoned vehicles, recovered guns, deported felons, sexual predators, and injunctions related to domestic violence.[22]

Proposed Changes

The bill amends s. 320.02, F.S., requiring DHSMV to include language on the motor vehicle registration application that allows a deaf or hard of hearing applicant to indicate voluntarily that he or she is deaf or hard of hearing. This notation will be included through DAVID and available through the FCIC system.

The bill will enable law enforcement officers to access this information upon searching a license plate prior to approaching the motor vehicle during a traffic stop.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.02, F.S., relating to registration required; application for registration; forms.

Section 2: Amends s. 320.27, F.S., relating to motor vehicle dealers.

Section 3: Provides an effective date of October 1, 2018.

---

[14] Florida Department of Highway Safety and Motor Vehicles, *D.A.V.I.D*, slide 2 (on file with the House Transportation & Infrastructure Subcommittee).
[15] Florida Department of Highway Safety and Motor Vehicles, *DAVID*, slide 3 (on file with the House Transportation & Infrastructure Subcommittee).
[16] *Id.*
[17] *Id.* at 8.
[18] Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: HB 135 DAVID Users (October 26, 2017).
[19] Florida Department of Law Enforcement, *Criminal Justice Information Services*, slide 13 (on file with the House Transportation & Infrastructure Subcommittee).
[20] *Id.*
[21] *Id.*
[22] *Id.* at 14.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DHSMV estimates that approximately 579 programming hours, or the equivalent of $23,745 in FTE and contracted resources, will be required to implement the bill.[23] These costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

---

[23] Department of Highway Safety and Motor Vehicles, *SB 290 Agency Analysis*, p. 5 (2018) (on file with the House Transportation & Infrastructure Subcommittee).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2017, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Replaced the term "hearing impaired" with "deaf or hard of hearing" to be consistent with the language used in other statutes;
- Clarified the flow of information through DAVID and the FCIC system; and
- Changed the effective date from July 1, 2018, to October 1, 2018.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

1 A bill to be entitled
2 An act relating to motor vehicle registration
3 applications; amending s. 320.02, F.S.; requiring the
4 application for motor vehicle registration to include
5 language indicating an applicant is deaf or hard of
6 hearing; requiring such information to be included in
7 certain databases; amending s. 320.27, F.S.;
8 conforming a cross-reference; providing an effective
9 date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsections (14) through (19) of section
14 320.02, Florida Statutes, are renumbered as subsections (15)
15 through (20), respectively, and a new subsection (14) is added
16 to that section to read:
17 320.02 Registration required; application for
18 registration; forms.—
19 (14) The application form for motor vehicle registration
20 must include language allowing an applicant who is deaf or hard
21 of hearing to voluntarily indicate that he or she is deaf or
22 hard of hearing. If the applicant indicates on the application
23 that he or she is deaf or hard of hearing, such information
24 shall be included through the Driver and Vehicle Information
25 Database and available through the Florida Crime Information

26 Center system.
27 Section 2. Paragraph (b) of subsection (9) of section
28 320.27, Florida Statutes, is amended to read:
29 320.27 Motor vehicle dealers.—
30 (9) DENIAL, SUSPENSION, OR REVOCATION.—
31 (b) The department may deny, suspend, or revoke any
32 license issued hereunder or under the provisions of s. 320.77 or
33 s. 320.771 upon proof that a licensee has committed, with
34 sufficient frequency so as to establish a pattern of wrongdoing
35 on the part of a licensee, violations of one or more of the
36 following activities:
37 1. Representation that a demonstrator is a new motor
38 vehicle, or the attempt to sell or the sale of a demonstrator as
39 a new motor vehicle without written notice to the purchaser that
40 the vehicle is a demonstrator. For the purposes of this section,
41 a "demonstrator," a "new motor vehicle," and a "used motor
42 vehicle" shall be defined as under s. 320.60.
43 2. Unjustifiable refusal to comply with a licensee's
44 responsibility under the terms of the new motor vehicle warranty
45 issued by its respective manufacturer, distributor, or importer.
46 However, if such refusal is at the direction of the
47 manufacturer, distributor, or importer, such refusal shall not
48 be a ground under this section.
49 3. Misrepresentation or false, deceptive, or misleading
50 statements with regard to the sale or financing of motor

51 vehicles which any motor vehicle dealer has, or causes to have,
52 advertised, printed, displayed, published, distributed,
53 broadcast, televised, or made in any manner with regard to the
54 sale or financing of motor vehicles.
55 4. Failure by any motor vehicle dealer to provide a
56 customer or purchaser with an odometer disclosure statement and
57 a copy of any bona fide written, executed sales contract or
58 agreement of purchase connected with the purchase of the motor
59 vehicle purchased by the customer or purchaser.
60 5. Failure of any motor vehicle dealer to comply with the
61 terms of any bona fide written, executed agreement, pursuant to
62 the sale of a motor vehicle.
63 6. Failure to apply for transfer of a title as prescribed
64 in s. 319.23(6).
65 7. Use of the dealer license identification number by any
66 person other than the licensed dealer or his or her designee.
67 8. Failure to continually meet the requirements of the
68 licensure law.
69 9. Representation to a customer or any advertisement to
70 the public representing or suggesting that a motor vehicle is a
71 new motor vehicle if such vehicle lawfully cannot be titled in
72 the name of the customer or other member of the public by the
73 seller using a manufacturer's statement of origin as permitted
74 in s. 319.23(1).
75 10. Requirement by any motor vehicle dealer that a

76 customer or purchaser accept equipment on his or her motor
77 vehicle which was not ordered by the customer or purchaser.
78 11. Requirement by any motor vehicle dealer that any
79 customer or purchaser finance a motor vehicle with a specific
80 financial institution or company.
81 12. Requirement by any motor vehicle dealer that the
82 purchaser of a motor vehicle contract with the dealer for
83 physical damage insurance.
84 13. Perpetration of a fraud upon any person as a result of
85 dealing in motor vehicles, including, without limitation, the
86 misrepresentation to any person by the licensee of the
87 licensee's relationship to any manufacturer, importer, or
88 distributor.
89 14. Violation of any of the provisions of s. 319.35 by any
90 motor vehicle dealer.
91 15. Sale by a motor vehicle dealer of a vehicle offered in
92 trade by a customer prior to consummation of the sale, exchange,
93 or transfer of a newly acquired vehicle to the customer, unless
94 the customer provides written authorization for the sale of the
95 trade-in vehicle prior to delivery of the newly acquired
96 vehicle.
97 16. Willful failure to comply with any administrative rule
98 adopted by the department or the provisions of s. 320.131(8).
99 17. Violation of chapter 319, this chapter, or ss.
100 559.901-559.9221, which has to do with dealing in or repairing

101 motor vehicles or mobile homes. Additionally, in the case of
102 used motor vehicles, the willful violation of the federal law
103 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to
104 the consumer sales window form.
105 18. Failure to maintain evidence of notification to the
106 owner or coowner of a vehicle regarding registration or titling
107 fees owed as required in s. <u>320.02(17)</u> ~~320.02(16)~~.
108 19. Failure to register a mobile home salesperson with the
109 department as required by this section.
110 Section 3. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 147 Status of Puerto Rico
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Government Accountability Committee		Miller	Williamson

SUMMARY ANALYSIS

The United States has administered the islands of Puerto Rico since the end of the Spanish-American War in 1898. Although the people of Puerto Rico have been United States citizens since 1917, the island was never "incorporated" into the United States. The United States Constitution applies within Puerto Rico, but as the islands remain an unincorporated territory, Congress may determine whether certain provisions, such as the right to a trial by jury, apply to Puerto Rico residents. Over time, the people of Puerto Rico acquired the right to certain forms of self-government through their own constitution (creating the Commonwealth of Puerto Rico) but receive different treatment under some federal laws simply because they are not entitled to the same treatment as United States citizens living within one of the states.

The memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and to apply law and policy in Puerto Rico on the same basis as in a state of the union without discrimination or inequality.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

1898 – 1899: Acquisition and Accession by the United States

The United States has administered the islands of Puerto Rico[1] since the conclusion of the Spanish-American War in 1898. The treaty ceding Puerto Rico and other territories to the United States[2] provided in part that the "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."[3]

The United States acceded to control of Puerto Rico under terms significantly different from prior territorial acquisitions. In the Louisiana Purchase, the United States provided the inhabitants of the territory "shall be *incorporated* into the Union of the United States, and admitted as soon as possible (to full rights of citizenship)."[4] The terms of acquiring Florida,[5] territory from Mexico,[6] and Alaska[7] similarly *incorporated* the inhabitants of the new territories into the United States. Contemporaneous with the acquisition of Puerto Rico, the former Republic of Hawaii was annexed as a territory of the United States.[8] In contrast, neither the territory nor the inhabitants of Puerto Rico were incorporated into or as part of the United States. This distinction continues to govern the status of the islands.

1900-1952: Unincorporated Territory

While Puerto Rico initially was placed under military jurisdiction, in 1900 Congress passed what is commonly known as the "Foraker Act" or the "Organic Act of 1900,"[9] providing a civilian government for the territory,[10] an elected non-voting Resident Commissioner in Congress,[11] and applying certain federal laws to the islands.[12] The Foraker Act also recognized those residing on the islands as of April 11, 1900, who did not choose to retain Spanish citizenship, together with resident United States citizens, to constitute The People of Porto Rico[13] and exercise the governmental powers provided in the act.[14]

---

[1] "Puerto Rico" applies not only to the main island but to several adjacent islands and their surrounding waters. 48 U.S.C. s. 731. The surrounding islands include Vieques, Culebra, Culebrita, Palomino, Mona, and Monito. At http://welcome.topuertorico.org/geogra.shtml (accessed 10/30/2017).

[2] "Treaty of Peace between the United States and Spain," 30 Stat. 1754 (Dec. 10, 1898) (Treaty of Paris). Under the Treaty Spain ceded Puerto Rico, the Philippines, and Guam. Treaty of Paris, articles II & III.

[3] Treaty of Paris, art. IX, cl. 2.

[4] "Treaty Between the United States of America and the French Republic," art. III, 8 Stat. 200 (1803), 1803 WL 890 (United States Treaty) (emphasis supplied).

[5] "Treaty of Amity, Settlement, and Limits, Between the United States of America and his Catholic Majesty," art. VI, 8 Stat. 252, 1820 WL 2057 (United States Treaty) (1819).

[6] "Treaty of Guadalupe Hidalgo," art. IX, 9 Stat. 922, 1848 WL 6374 (United States Treaty) (1848).

[7] "Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russians to the United States of America," art. III, 15 Stat. 539, 1867 WL 10236 (United States Treaty) (1867).

[8] "Joint Resolution to provide for annexing the Hawaiian Islands to the United States," 55 Res. No. 55, 30 Stat. 750, (Newlands Resolution) (July 7, 1898).

[9] "An Act Temporarily to provide revenue and a civil government for Porto Rico, and for other purposes," (sic) 31 Stat. 77 (April 12, 1900) (Foraker Act). *See* Library of Congress, *Foraker Act (Organic Act of 1900)*, at https://www.loc.gov/rr/hispanic/1898/foraker.html (accessed 10/10/2017).

[10] Foraker Act, ss. 15-37.

[11] Foraker Act, s. 39. The voters in Puerto Rico would elect the Resident Commissioner biennially.

[12] Foraker Act, s. 14. These included federal statutory laws not otherwise made inapplicable in Puerto Rico but did not include the internal revenue laws.

[13] The island officially was renamed "Puerto Rico" in 1932. *See* 48 U.S.C. s. 731a, codifying ch. 190, 47 Stat. 158 (May 17, 1932).

[14] Foraker Act, s. 7.

Contemporaneously, the United States Supreme Court decided a series of cases, known as the *Insular Cases*, addressing whether the United States Constitution applied to any territory that was not a state.[15] While the Court generally found the Constitution applied within the new territories by its own terms, not legislative action, this conclusion raised issues concerning the extent of such application and the resulting administration of law, particularly by the existing legal systems in the territories acquired from Spain. The Court thus developed the doctrine of "territorial incorporation" and found the Constitution fully applied in those territories incorporated into the United States and destined for statehood but only partially applied in those unincorporated territories over which the United States exerted exclusive control.[16]

The Jones-Shafroth Act of 1917[17] made significant changes in both the organization of the Puerto Rico government and the relationship of the territory with the United States. This act established a bill of rights for the territory,[18] created a bicameral legislature,[19] and increased the term of the Resident Commissioner from two to four years.[20] The act granted United States citizenship to all residents of the islands.[21] However, Puerto Rico remained an unincorporated territory of the United States.

In *Balzac v. People of Porto Rico,*[22] the United States Supreme Court resolved whether the United States Constitution guaranteed the right to a jury trial in Puerto Rico. The Court found the full guarantees of the Constitution would apply in any territory incorporated into the United States and recognized that incorporation into the Union was an important step towards statehood.[23] Incorporation would be accomplished by express congressional declaration or "implication so strong as to exclude any other view."[24] Congress made no such declaration in the Jones-Shafroth Act and the terms of the act did not show a strong implication supporting incorporation. Accordingly, the Court found the act continued Puerto Rico's unincorporated status and there was no constitutionally protected right to a jury trial.[25]

The Jones-Shafroth Act also provided that bonds issued by the government of Puerto Rico or under its authority are exempt from federal, state, and local taxation regardless of the location of the bondholder.[26] This provision made Puerto Rican municipal debts particularly attractive to bondholders, since municipal bonds generally are exempt from taxation only when held by residents of the issuing state.[27]

---

[15] *See De Lima v. Bidwell,* 182 U.S. 1, 21 S.Ct. 743, 45 L.Ed. 1041 (1901); *Dooley v. United States,* 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074 (1901); *Armstrong v. United States,* 182 U.S. 243, 21 S.Ct. 827, 45 L.Ed. 1086 (1901); *Downes v. Bidwell,* 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901); *Hawaii v. Mankichi,* 190 U.S. 197, 23 S.Ct. 787, 47 L.Ed. 1016 (1903); *Dorr v. United States,* 195 U.S. 138, 24 S.Ct. 808, 49 L.Ed. 128 (1904).

[16] *See Boumediene v. Bush,* 553 U.S. 723, 757-758, 128 S. Ct. 2229, 2254, 171 L.Ed. 2d 41 (2008)

[17] "An Act To provide a civil government for Porto Rico, and for other purposes" (sic), Pub. L. No. 64-368, 39 Stat. 951 (Mar. 2, 1917) (Jones-Shafroth Act). Generally codified at 48 U.S.C. ch. 4.

[18] Jones-Shafroth Act, s. 2.

[19] Jones-Shafroth Act, s. 25.

[20] Jones-Shafroth Act, s. 29.

[21] Jones-Shafroth Act, s. 5.

[22] 258 U.S 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922).

[23] *Balzac,* supra at 258 U.S. 311.

[24] *Balzac*, supra at 258 U.S. 306.

[25] For example, the Court noted the act provided a bill of rights, which would not have been necessary if the act incorporated the territory into the Union, thereby making applicable the entire Bill of Rights in the Constitution. By articulating a separate bill of rights for citizens in Puerto Rico, Congress displayed its intent not to incorporate the territory into the United States. *Balzac*, supra at 258 U.S 306-307.

[26] Jones-Shafroth Act, s. 3.

[27] *See* "The Bonds that Broke Puerto Rico" (N.Y. Times, June 30, 2015), at http://www.nytimes.com/2015/07/01/business/dealbook/the-bonds-that-broke-puerto-rico.html (accessed 10/10/2017).

1952 – Present: Commonwealth of Puerto Rico

Passage of the Puerto Rico Federal Relations Act of 1950 paved the way for modern self-government.[28] The act authorized the Legislature of Puerto Rico to call for a referendum to establish a constitutional convention.[29] The new constitution drafted by the convention was approved by voters on March 3, 1952,[30] approved by Congress on July 3, 1952,[31] and officially proclaimed on July 25, 1952.[32]

United States citizens residing in Puerto Rico have those rights, privileges, and immunities of citizens of all states in the same manner as if Puerto Rico was a state.[33] Residents in Puerto Rico may qualify for benefits under Old-Age, Survivors, and Disability Insurance administered by the Social Security Administration.[34] Supplemental Security Income benefits are not provided to residents in Puerto Rico.[35] Those in Puerto Rico may enroll in Medicaid and the Children's Health Insurance Program (CHIP).[36]

Resident United States citizens of Puerto Rico are treated separately from United States citizens in the several states. Puerto Rico residents may exclude all sources of income from sources in the Commonwealth when reporting income for United States income taxes. Such taxpayers need not file a tax return if all income is from sources in Puerto Rico. However, if they have income from sources outside Puerto Rico that exceeds the filing thresholds, they are required to file a United States tax return.[37] In 2015, residents of Puerto Rico paid $3,524,557 in federal taxes, primarily FICA but also self-employment taxes, unemployment insurance taxes, estate and trust taxes, estate taxes, gift taxes, and excise taxes.[38]

As an unincorporated territory, the Commonwealth of Puerto Rico continues to be administered by Congress and the rights of the resident United States citizens are subject to interpretation as to which constitutionally protected rights are applicable in the territory. In a recent decision, the United States Supreme Court reaffirmed the concept that questions of extraterritorial application of the United States Constitution hinge on objective factors and practical concerns, not a rigid formalistic approach.[39]

The Status Question

Since the adoption and promulgation of its constitution in 1952, the Commonwealth of Puerto Rico exercises significant local governmental control but remains an unincorporated territory. In a series of referenda, the people of Puerto Rico affirmed the current Commonwealth status but support for statehood increased. Some local judicial decisions examined whether actions by Congress over time should be interpreted as effectively incorporating Puerto Rico into the United States, resulting in full application of the United States Constitution to the rights of resident United States citizens. Finally, beginning in 2000, a series of Presidential executive orders created and continued a task force to examine the island's political status as well as looking to economic development and other needs of the citizens.

---

[28] "Puerto Rico Federal Relations Act of 1950," Pub. L. No. 81-600 (July 3, 1950). *See* 48 U.S.C. ss. 731a – 731e. The proposed constitution was required to provide for both a republican form of government and a bill of rights. 48 U.S.C. s. 731c.
[29] Puerto Rico Federal Relations Act of 1950, s. 2.
[30] Dieter Nohlen, *Elections in the Americas A Data Handbook Volume 1: North America, Central America, and the Caribbean* 556 (Oxford University Press 2005).
[31] Pub. L. No. 82-447 (July 3, 1952).
[32] PBS, Puerto Rico: A Timeline, http://www.pbs.org/wgbh/masterpiece/americancollection/woman/timeline.html (last visited Mar. 10, 2015).
[33] 48 U.S.C. s. 737.
[34] At https://www.ssa.gov/policy/docs/statcomps/supplement/2016/oasdi.pdf (accessed 10/6/2017).
[35] At https://www.ssa.gov/policy/docs/statcomps/supplement/2016/ssi.pdf (accessed 10/6/2017).
[36] As of June 2105, 1,671,657 people in Puerto Rico were enrolled in Medicaid or CHIP. At https://www.medicaid.gov/medicaid/by-state/puerto-rico.html (accessed 10/7/2017).
[37] At https://www.irs.gov/taxtopics/tc900/tc901 (accessed 10/7/2017)
[38] At https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5 (accessed 10/7/2017).
[39] *Boumediene*, supra at 553 U.S. 757-758, 764, 128 S. Ct. 2229, 2254-2255, 2258.

In a case about the Commonwealth's compliance with federal law concerning adequate Medicaid payments, the United States District Court for the District of Puerto Rico examined whether the Spending Clause of the United States Constitution[40] applied to Puerto Rico.[41] Restating findings from an earlier order in the same case, the Court observed that Congress' entire course of conduct since 1899 effectively incorporated Puerto Rico into the United States.[42] In a subsequent case, a different judge from the same court considered a suit to compel the United States to apportion Puerto Rico into congressional districts. The plaintiffs in that case previously brought similar actions, and the court reiterated its prior decisions that citizens of Puerto Rico do not have the right to vote for members of Congress because Puerto Rico is not a state.[43] Plaintiffs argued the *Rullan* case showed Congress *de facto* had incorporated Puerto Rico into the United States. The court observed that even if that reasoning was correct, that only meant Puerto Rico would be an incorporated territory, not a state for purposes of electing members to Congress.[44]

In a memorandum dated November 30, 1992, President George H. W. Bush directed all federal executive departments and agencies to treat Puerto Rico administratively as if it was a state, to the extent doing so would not disrupt federal programs or operations.[45] President Clinton created the President's Task Force on Puerto Rico's Status in 2000 with its primary purpose to examine proposals for Puerto Rico's future political status.[46] The scope of the Task Force's area of inquiry was expanded by President Obama to include the administration of federal programs in Puerto Rico, job creation, education, health care, clean energy, and economic development.[47] In its 2011 report, the Task Force recommended a referendum be conducted in Puerto Rico, preferably posing two questions. First, whether the voters wanted to remain under the United States or preferred some form of independence. Second, if staying with the United States, whether Puerto Rico should continue as a commonwealth or become a state. Alternatively, if preferring independence, would that be complete independence or some form of "free association" under which the island would be independent but still have some integrated relationship with the United States.[48]

The population of Puerto Rico in 2016 was approximately 3,411,307.[49] If admitted to the Union as a state, Puerto Rico would rank 30th in population[50] with a potential congressional delegation of five members in the House of Representatives and two Senators.[51]

[40] Art. I, s. 8, cl. 1, U.S. Const.
[41] *Consejo de Salud Playa de Ponce v. Rullan*, 586 F. Supp. 22 (D. Puerto Rico 2008).
[42] *Rullan*, supra at 43-44.
[43] *Igartua v. U.S.,* 86 F. Supp. 3d 50 (D. Puerto Rico 2015).
[44] *Igartua* supra at 56-57.
[45] At https://bush41library.tamu.edu/archives/public-papers/5096 (accessed 10/28/2017).
[46] Executive Order 13183, 65 F.R. 82889 (12/29/2000). This original order required a report no later than May 1, 2001, which deadline was extended by President George W. Bush to August 1, 2001. Executive Order 13209, 66 F.R. 22105 (4/30/2001). This in turn was converted to a biennial reporting period by Executive Order 13319, 68 F.R. 68233 (12/3/2003).
[47] Executive Order 13517, 74 F.R. 57239 (10/30/2009).
[48] "Report by the President's Task Force on Puerto Rico's Status, Executive Summary" (3/16/2011), at http://www.oslpr.org/v2/PDFS/ESTaskForceReportPRStatus.pdf (accessed 10/28/2017).
[49] At https://www.census.gov/search-results.html?q=puerto+rico&page=1&stateGeo=none&searchtype=web&cssp=SERP&search.x=0&search.y=0 (accessed 10/10/2017).
[50] Greater than the states of Alaska, Arkansas, Delaware, Hawaii, Idaho, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wyoming, and the District of Columbia. United States Census Bureau estimates at https://www.census.gov/search-results.html?q=population+comparison+states+puerto+rico&page=1&stateGeo=none&searchtype=web&search.x=0&search.y=0 (accessed 10/10/2017).
[51] *See* https://www.nytimes.com/2017/09/25/us/puerto-rico-hurricane-american.html (accessed 10/10/2017).

Since 1967, there have been five separate referenda on Puerto Rico's status. The following table shows the results:[52]

<table>
<tr><th>Year</th><th>Voting Participation</th><th>Commonwealth</th><th>Statehood</th><th>Independence</th><th>Free Ass'n</th><th>None of the Above</th><th>Void/ Blank</th></tr>
<tr><td>1967</td><td>65.9%</td><td>425,132</td><td>274,312</td><td>4,248</td><td>N/A</td><td>N/A</td><td>N/A</td></tr>
<tr><td>1993</td><td>73.5 %</td><td>826,326</td><td>788,296</td><td>75,620</td><td>N/A</td><td>N/A</td><td>10,748</td></tr>
<tr><td>1998</td><td>71.3%</td><td>993</td><td>728,157</td><td>39,838</td><td>4,536</td><td>787,900</td><td>4,846</td></tr>
<tr><td rowspan="2">2012</td><td rowspan="2">78.2%</td><td>N/A</td><td>834,191</td><td>74,895</td><td>Sovereign Cmnwlth: 454,768</td><td colspan="2">Blank: 498,604
Void: 16,744</td></tr>
<tr><td>Ballot Question: Retain Present Status: 828,077
Reject present status: 970,910</td><td>N/A</td><td colspan="2">N/A</td><td>N/A</td><td>80,215</td></tr>
<tr><td>2017</td><td>22.9%</td><td>6,823</td><td>502,801</td><td colspan="2">7,786</td><td>N/A</td><td>983</td></tr>
</table>

According to these results, the voters' preference for statehood appeared to increase over time.

Effect of Memorial

The memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and to apply law and policy in Puerto Rico on the same basis as in a state of the union without discrimination or inequality.

Copies of the memorial will be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

[52] Results at http://electionspuertorico.org/cgi-bin/events.cgi (accessed 10/28/2017).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   The memorial neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and approved the memorial as a committee substitute. The amendment revised the precatory clauses of the memorial to describe how Puerto Rico was not incorporated into the territory of the United States at the time the islands were acquired from Spain and the limited extent of the United States Constitution due to the ongoing unincorporated status. The amendment clarified that neither the grant of United States citizenship to Puerto Rico residents in 1917, nor the authorization of the Commonwealth's constitution in 1952, changed this unincorporated status. The amendment further argued that Congress' actions since 1898 appear effectively to have incorporated Puerto Rico into the United States to the extent

Congress should make official this change of status, particularly as to the impact on rights under federal law of individual United States citizens residing in Puerto Rico. Finally, the amendment noted that incorporation into the United States would not make Puerto Rico a state but would entitle its citizens to the same treatment and protection they would receive if residing in one of the states, especially pertaining to natural disaster relief. Therefore, the amendment urged Congress to incorporate Puerto Rico and its citizens into the territory of the United States but did not request an express path to statehood.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

1 House Memorial
2 A memorial to the Congress of the United States,
3 urging Congress to apply law and policy in Puerto Rico
4 without discrimination or inequality and to
5 incorporate the Commonwealth of Puerto Rico into the
6 United States.
7
8 WHEREAS, since 1898 the United States has administered the
9 islands of Puerto Rico and its population as an unincorporated
10 territory of the United States, and
11 WHEREAS, less than two years after acceding to sole and
12 exclusive sovereignty over the islands of Puerto Rico, in 1900
13 the United States Congress adopted the law known as the Foraker
14 Act, providing a civilian government for the territory, and
15 WHEREAS, in the *Insular Cases* the United States Supreme
16 Court recognized that the United States Constitution applies
17 within the unincorporated territories of the United States, but
18 the scope of such application was less than the full guarantees
19 of individual liberty accorded to those residing in states or
20 incorporated territories of the Union, and
21 WHEREAS, in 1917 the United States Congress adopted the
22 Jones-Shafroth Act, providing for greater self-government and
23 granting United States citizenship to all residents of Puerto
24 Rico, and
25 WHEREAS, in the decision *Balzac v. People of Porto Rico* the

26 United States Supreme Court reiterated the holding of the
27 *Insular Cases* and ruled that the United States Constitution
28 applied only in part in the unincorporated territories, thus
29 affirming the denial of right to trial by jury to the petitioner
30 in that case, and
31 WHEREAS, the United States Supreme Court in *Balzac* also
32 found that incorporation into the United States was a key step
33 to statehood for any territory, and the incorporation could only
34 be accomplished by express congressional declaration or by
35 "implication so strong as to exclude any other view," and
36 WHEREAS, in 1950 Congress authorized the people of Puerto
37 Rico to conduct a constitutional convention for the purpose of
38 developing a constitution providing for more complete self-
39 government by Puerto Rico, requiring such constitution to
40 provide both a republican form of government and a bill of
41 rights, and
42 WHEREAS, requiring a republican form of government to each
43 state is a duty of the United States Congress under Article IV,
44 section 4, of the United States Constitution, and
45 WHEREAS, pursuant to the authority granted by the United
46 States Congress, the people of Puerto Rico met in convention and
47 drafted a constitution meeting the requirements of the 1950 act,
48 and the United States Congress approved the Constitution of the
49 Commonwealth of Puerto Rico in 1952, and
50 WHEREAS, the territorial histories of other states such as

51 Louisiana, Alaska, and Hawaii, demonstrate a similar progress of
52 self-government, from early congressional acts establishing
53 basic civil government, to a more formally structured government
54 conducted by the people of the particular territory, to approval
55 of an official state constitution, and
56 WHEREAS, the Constitution of the Commonwealth of Puerto
57 Rico was approved before congressional approval of the proposed
58 state constitutions for Alaska and Hawaii, and the subsequent
59 admission of those states into the Union, and
60 WHEREAS, the granting of United States citizenship to the
61 people of Puerto Rico, requiring their self-governing
62 constitution to provide for a republican form of government and
63 a bill of rights, admitting residents of Puerto Rico into the
64 Armed Forces of the United States in which they have bravely and
65 honorably defended the United States as duty has required,
66 integrating all aspects of the economy of Puerto Rico into the
67 greater economy of the United States, and evolving the Puerto
68 Rico laws and judicial system from their Spanish origins into
69 provisions and process consistent with the laws and
70 jurisprudence of the United States, creates the strong and clear
71 implication that Puerto Rico *de facto* has been incorporated into
72 the United States, and
73 WHEREAS, citizens of the United States residing in Puerto
74 Rico currently are not entitled to the same treatment under
75 certain federal laws, such as the provision of Supplemental

76 Security Income from the Social Security Administration, as are
77 other citizens of the United States residing in the several
78 states of the Union, and
79 WHEREAS, the denial of equal treatment of United States
80 citizens residing in Puerto Rico under certain federal laws is
81 justified solely on the basis that Puerto Rico is not
82 incorporated into the United States despite over one hundred
83 years of assimilation into the culture, economy, and political
84 process of the United States, and
85 WHEREAS, the recent catastrophic impacts to Puerto Rico of
86 Hurricanes Irma and Maria, and the federal response to the
87 resulting humanitarian crisis, demonstrates compelling need for
88 the incorporation of Puerto Rico into the United States so that
89 responses to natural disasters in Puerto Rico have the same
90 priority and are conducted on the same basis as federal
91 responses to natural disasters elsewhere in the United States,
92 and
93 WHEREAS, integration into the United States, while
94 necessary to move towards statehood, will not automatically
95 confer statehood on Puerto Rico, NOW, THEREFORE,
96
97 Be It Resolved by the Legislature of the State of Florida:
98
99 That the United States Congress is urged to incorporate the
100 territory and resident United States citizens of Puerto Rico

101 into the United States and to apply all law and policy in Puerto
102 Rico on the same basis as in a state of the union without
103 discrimination or inequality.
104 BE IT FURTHER RESOLVED that copies of this memorial be
105 dispatched to the President of the United States, to the
106 President of the United States Senate, to the Speaker of the
107 United States House of Representatives, and to each member of
108 the Florida delegation to the United States Congress.

HB 215

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 215 Autocycles
SPONSOR(S): Payne and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 2 N	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	13 Y, 1 N	Cobb	Davis
3) Government Accountability Committee		Roth	Williamson

SUMMARY ANALYSIS

Currently, Florida law does not define the term "autocycle" and the Florida Department of Highway Safety and Motor Vehicles (DHSMV) registers autocycles as motorcycles. This means operators of autocycles are not required to maintain insurance or wear safety belts, but are required to:

- Maintain a motorcycle endorsement or motorcycle license;
- Wear a helmet, unless over 21 years of age with at least $10,000 of medical insurance or riding within an enclosed cab; and
- Wear eye protection.

The bill defines "autocycle" as a three-wheeled motorcycle that has two wheels in the front and one wheel in the back, is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it and is manufactured in accordance with the applicable federal motorcycle safety standards provided in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

The bill also amends the definition of motorcycle to include an autocycle and exempts a vehicle from the definition of motorcycle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle.

The bill requires the operator, the front seat passenger, and any passenger under the age of 18 years old in an autocycle to wear a safety belt. Additionally, the bill exempts operators of an autocycle from needing a motorcycle endorsement or motorcycle license and from needing to complete motorcycle skills and motorcycle knowledge testing to operate an autocycle. This will allow all drivers with a Class E driver license and above to drive an autocycle without a motorcycle license or endorsement.

The Revenue Estimating Conference met on October 27, 2017, and determined that the bill would have an indeterminate, though likely insignificant, negative fiscal impact to DHSMV. *See* the fiscal section for further details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) serves under its parent agency the United States Department of Transportation.[1] Some of the responsibilities of NHTSA include:

- Investigating safety defects in motor vehicles;
- Setting and enforcing fuel economy standards;
- Helping states and local communities reduce the threat of drunk drivers;
- Promoting the use of safety belts, child safety seats, and air bags;
- Investigating odometer fraud;
- Establishing and enforcing vehicle anti-theft regulations;
- Conducting research on driver behavior and traffic safety; and
- Providing consumer information on motor vehicle safety topics.[2]

Additionally, NHTSA is the agency in charge of regulating vehicle manufacturers.[3]

Autocycles

NHTSA does not currently have a vehicle classification for autocycles.[4] Autocycles are mechanically distinct from other vehicles on the road and can be identified by a three-wheeled design, a steering wheel, a seat for the driver, and seats for passengers.[5] At the federal level, autocycles fall under the definition of "motorcycle" and must generally comply with applicable motorcycle manufacturing and safety standards.[6]

In 2015, the U.S. House and Senate unsuccessfully introduced companion bills addressing federal autocycle regulation that defined "autocycle" and provided interim safety regulations for passenger vehicles and motorcycles.[7] Additionally, the U.S. Department of Transportation and NHTSA proposed a rulemaking framework to change the definition of "motorcycle" to exclude three-wheeled vehicles that are configured like passenger cars.[8] The proposed rule has not been published.[9]

In the absence of federal guidance on the regulation of autocycles, states are making efforts to define what autocycles are, address safety requirements and passenger restrictions, regulate operator licensing and operation of autocycles on roadways, and distinguish autocycles from motorcycles in crash reporting.[10] Currently, 31 states have statutory autocycle definitions and all 31 states define an autocycle as having three wheels. These states incorporate a variety of additional characteristics into the definition of autocycle. For example:

- Twenty seven states define an autocycle as having a steering wheel;
- Nineteen states define an autocycle as having seatbelts;

---

[1] USA.gov, *National Highway Traffic Safety Administration*, available at https://www.usa.gov/federal-agencies/national-highway-traffic-safety-administration (last visited January 9, 2018).
[2] *Id.*
[3] Steven Lambert and Douglas Shinkle, *Transportation Review: Autocycles*, National Conference of State Legislatures (April 17, 2017), available at http://www.ncsl.org/research/transportation/transportation-review-autocycles.aspx (last visited January 9, 2018).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

- Sixteen states define an autocycle by stating that the driver of an autocycle will not straddle the seat;
- Fifteen states define an autocycle as being enclosed;
- Fifteen states define an autocycle as having foot pedals to control acceleration, braking, and, if applicable, a clutch;
- Eleven states define an autocycle as meeting federal motorcycle safety requirements; and
- Ten states define an autocycle as having a roll cage or roll bar.[11]

Since autocycles share more characteristics with passenger motor vehicles than motorcycles, some of the motorcycle requirements, or lack of requirements, may or may not be necessary for autocycles. For example, studies suggest a motorcycle endorsement or motorcycle license should not be required for operating an autocycle.[12] Motorcycle rider courses primarily focus on operating a motorcycle in which the operator sits astride the saddle and uses handlebars, while using his or her body weight, balance, and position on the motorcycle to corner or stop; however, operating an autocycle requires mechanics similar to a passenger motor vehicle.

Autocycles in Florida

Currently, Florida does not have a statute defining "autocycle," and the Florida Department of Highway Safety and Motor Vehicles (DHSMV) registers autocycles as motorcycles.[13] This means operators of autocycles are not required to maintain insurance[14] or wear safety belts,[15] but are required to:

- Maintain a motorcycle endorsement or motorcycle license;[16]
- Wear a helmet, unless over 21 years of age with at least $10,000 of medical insurance or riding within an enclosed cab;[17] and
- Wear eye protection.[18]

Since autocycles fall under the definition of a motorcycle they are only required to meet the federal safety standards required for motorcycles; thus, autocycles are not required to meet the crash safety standards or occupant safety criteria that a regular passenger motor vehicle is required to meet.[19]

Proposed Changes

The bill creates s. 316.003(2), F.S., defining "autocycle" as:

> A three-wheeled motorcycle that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards provided in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

The bill also amends the definition of motorcycle in ss. 316.003, 320.01(26), and 403.415(3)(e), F.S., to include an autocycle and exempts a vehicle from the definition of motorcycle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by NHTSA for a motorcycle.

---

[11] *Id.*

[12] American Association of Motor Vehicle Administrators, *Best Practices for the Regulation of Three-Wheel Vehicles* (October 2013), available at http://www.aamva.org/3wheelvehiclebp/ at pp. 5 and 9 (last visited January 9, 2018).

[13] Department of Highway Safety and Motor Vehicles, *Technical Advisory RS/TL16-015: Registering the Slingshot* (June 20, 2016), available at https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-015.pdf (last visited January 9, 2018).

[14] Section 324.021(1), F.S.

[15] Section 316.614(3)(a)5, F.S.

[16] Section 322.03(4), F.S.

[17] Section 316.211, F.S.

[18] Section 316.211(2), F.S.

[19] 49 CFR § 571, Subpart B.

The bill amends s. 316.614(4) and (5), F.S., requiring that the operator, front seat passenger, and any passenger under the age of 18 years old in an autocycle wear a safety belt.

The bill amends ss. 322.03(4) and 322.12, F.S., exempting operators of an autocycle from needing a motorcycle endorsement or motorcycle license and from needing to complete motorcycle skills and motorcycle knowledge testing to operate an autocycle. This will allow all drivers with a Class E driver license and above to drive an autocycle without a motorcycle license or endorsement.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.003, F.S., relating to definitions.

Section 2: Amends s. 316.614, F.S., relating to safety belt usage.

Section 3: Amends s. 320.01, F.S., relating to definitions, general.

Section 4: Amends s. 322.03, F.S., relating to drivers must be licensed; penalties.

Section 5: Amends s. 322.12, F.S., relating to examination of application.

Section 6: Amends s. 403.415, F.S., relating to motor vehicle noise.

Section 7: Amends s. 212.05, F.S., relating to sales, storage, use tax.

Section 8: Amends s. 316.303, F.S., relating to television receivers.

Section 9: Amends s. 320.08, F.S., relating to license taxes.

Section 10: Amends s. 655.960, F.S., relating to definitions.

Section 11: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference met on October 27, 2017, and determined that the bill would have an indeterminate, though likely insignificant, negative fiscal impact to DHSMV. Based on fiscal year 2016-2017 data, DHSMV estimates a revenue reduction of approximately $4,123 to the Highway Safety Operating Trust Fund.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Autocycle operators will not be required to obtain a motorcycle license or endorsement and will not need to complete a motorcycle knowledge and skills test currently required to obtain such a license or endorsement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to autocycles; amending s. 316.003,
3 F.S.; defining the term "autocycle"; revising the
4 definition of the term "motorcycle"; amending s.
5 316.614, F.S.; requiring safety belt usage by an
6 operator or passenger of an autocycle; amending s.
7 320.01, F.S.; including an autocycle in the definition
8 of the term "motorcycle"; amending s. 322.03, F.S.;
9 authorizing operation of an autocycle without a
10 motorcycle endorsement; amending s. 322.12, F.S.;
11 providing applicability; amending s. 403.415, F.S.;
12 conforming provisions to changes made by the act;
13 amending ss. 212.05, 316.303, 320.08, and 655.960,
14 F.S.; conforming cross-references; providing an
15 effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Subsections (2) through (99) of section
20 316.003, Florida Statutes, are renumbered as subsections (3)
21 through (100), respectively, present subsections (41) and (57)
22 are amended, and a new subsection (2) is added to that section,
23 to read:
24 316.003 Definitions.—The following words and phrases, when
25 used in this chapter, shall have the meanings respectively

26 ascribed to them in this section, except where the context
27 otherwise requires:
28 (2) AUTOCYCLE.—A three-wheeled motorcycle that has two
29 wheels in the front and one wheel in the back; is equipped with
30 a roll cage or roll hoops, a seat belt for each occupant,
31 antilock brakes, a steering wheel, and seating that does not
32 require the operator to straddle or sit astride it; and is
33 manufactured in accordance with the applicable federal
34 motorcycle safety standards provided in 49 C.F.R. part 571 by a
35 manufacturer registered with the National Highway Traffic Safety
36 Administration.
37 (42) ~~(41)~~ MOTORCYCLE.—Any motor vehicle having a seat or
38 saddle for the use of the rider and designed to travel on not
39 more than three wheels in contact with the ground, including an
40 autocycle, and ~~but~~ excluding a vehicle in which the operator is
41 enclosed by a cabin unless it meets the requirements set forth
42 by the National Highway Traffic Safety Administration for a
43 motorcycle. The term "motorcycle" does not include a tractor or
44 a moped.
45 (58) ~~(57)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise
46 provided in paragraph (80)(b) ~~(79)(b)~~, any privately owned way
47 or place used for vehicular travel by the owner and those having
48 express or implied permission from the owner, but not by other
49 persons.
50 Section 2. Subsections (4) and (5) of section 316.614,

51 Florida Statutes, are amended to read:
52 316.614 Safety belt usage.—
53 (4) It is unlawful for any person:
54 (a) To operate a motor vehicle or autocycle in this state
55 unless each passenger and the operator of the vehicle or
56 autocycle under the age of 18 years are restrained by a safety
57 belt or by a child restraint device pursuant to s. 316.613, if
58 applicable; or
59 (b) To operate a motor vehicle or autocycle in this state
60 unless the person is restrained by a safety belt.
61 (5) It is unlawful for any person 18 years of age or older
62 to be a passenger in the front seat of a motor vehicle or
63 autocycle unless such person is restrained by a safety belt when
64 the vehicle or autocycle is in motion.
65 Section 3. Subsection (26) of section 320.01, Florida
66 Statutes, is amended to read:
67 320.01 Definitions, general.—As used in the Florida
68 Statutes, except as otherwise provided, the term:
69 (26) "Motorcycle" means any motor vehicle having a seat or
70 saddle for the use of the rider and designed to travel on not
71 more than three wheels in contact with the ground, including an
72 autocycle, and excluding a vehicle in which the operator is
73 enclosed by a cabin unless it meets the requirements set forth
74 by the National Highway Traffic Safety Administration for a
75 motorcycle. The term "motorcycle" does not include a tractor or

76 a moped.
77 Section 4. Subsection (4) of section 322.03, Florida
78 Statutes, is amended to read:
79 322.03 Drivers must be licensed; penalties.—
80 (4) A person may not operate a motorcycle unless he or she
81 holds a driver license that authorizes such operation, subject
82 to the appropriate restrictions and endorsements. A person may
83 operate an autocycle without a motorcycle endorsement.
84 Section 5. Paragraph (c) is added to subsection (5) of
85 section 322.12, Florida Statutes, to read:
86 322.12 Examination of applicants.—
87 (5)
88 (c) This subsection does not apply to the operation of an
89 autocycle.
90 Section 6. Paragraph (e) of subsection (3) of section
91 403.415, Florida Statutes, is amended to read:
92 403.415 Motor vehicle noise.—
93 (3) DEFINITIONS.—The following words and phrases when used
94 in this section shall have the meanings respectively assigned to
95 them in this subsection, except where the context otherwise
96 requires:
97 (e) "Motorcycle" means any motor vehicle having a seat or
98 saddle for the use of the rider and designed to travel on not
99 more than three wheels in contact with the ground, including an
100 autocycle, and ~~but~~ excluding a vehicle in which the operator is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

101 enclosed by a cabin unless it meets the requirements set forth
102 by the National Highway Traffic Safety Administration for a
103 motorcycle. The term "motorcycle" does not include a tractor or
104 a moped.
105 Section 7. Paragraph (c) of subsection (1) of section
106 212.05, Florida Statutes, is amended to read:
107 212.05 Sales, storage, use tax.—It is hereby declared to
108 be the legislative intent that every person is exercising a
109 taxable privilege who engages in the business of selling
110 tangible personal property at retail in this state, including
111 the business of making mail order sales, or who rents or
112 furnishes any of the things or services taxable under this
113 chapter, or who stores for use or consumption in this state any
114 item or article of tangible personal property as defined herein
115 and who leases or rents such property within the state.
116 (1) For the exercise of such privilege, a tax is levied on
117 each taxable transaction or incident, which tax is due and
118 payable as follows:
119 (c) At the rate of 6 percent of the gross proceeds derived
120 from the lease or rental of tangible personal property, as
121 defined herein; however, the following special provisions apply
122 to the lease or rental of motor vehicles:
123 1. When a motor vehicle is leased or rented for a period
124 of less than 12 months:
125 a. If the motor vehicle is rented in Florida, the entire

126 amount of such rental is taxable, even if the vehicle is dropped
127 off in another state.
128 b. If the motor vehicle is rented in another state and
129 dropped off in Florida, the rental is exempt from Florida tax.
130 2. Except as provided in subparagraph 3., for the lease or
131 rental of a motor vehicle for a period of not less than 12
132 months, sales tax is due on the lease or rental payments if the
133 vehicle is registered in this state; provided, however, that no
134 tax shall be due if the taxpayer documents use of the motor
135 vehicle outside this state and tax is being paid on the lease or
136 rental payments in another state.
137 3. The tax imposed by this chapter does not apply to the
138 lease or rental of a commercial motor vehicle as defined in s.
139 <u>316.003(13)(a)</u> ~~316.003(12)(a)~~ to one lessee or rentee for a
140 period of not less than 12 months when tax was paid on the
141 purchase price of such vehicle by the lessor. To the extent tax
142 was paid with respect to the purchase of such vehicle in another
143 state, territory of the United States, or the District of
144 Columbia, the Florida tax payable shall be reduced in accordance
145 with the provisions of s. 212.06(7). This subparagraph shall
146 only be available when the lease or rental of such property is
147 an established business or part of an established business or
148 the same is incidental or germane to such business.
149 Section 8. Subsections (1) and (3) of section 316.303,
150 Florida Statutes, are amended to read:

151 316.303 Television receivers.—
152 (1) No motor vehicle may be operated on the highways of
153 this state if the vehicle is actively displaying moving
154 television broadcast or pre-recorded video entertainment content
155 that is visible from the driver's seat while the vehicle is in
156 motion, unless the vehicle is equipped with autonomous
157 technology, as defined in s. 316.003(3) ~~316.003(2)~~, and is being
158 operated in autonomous mode, as provided in s. 316.85(2).
159 (3) This section does not prohibit the use of an
160 electronic display used in conjunction with a vehicle navigation
161 system; an electronic display used by an operator of a vehicle
162 equipped with autonomous technology, as defined in s. 316.003(3)
163 ~~316.003~~; or an electronic display used by an operator of a
164 vehicle equipped and operating with driver-assistive truck
165 platooning technology, as defined in s. 316.003.
166 Section 9. Section 320.08, Florida Statutes, is amended to
167 read:
168 320.08 License taxes.—Except as otherwise provided herein,
169 there are hereby levied and imposed annual license taxes for the
170 operation of motor vehicles, mopeds, motorized bicycles as
171 defined in s. 316.003(4) ~~316.003(3)~~, tri-vehicles as defined in
172 s. 316.003, and mobile homes as defined in s. 320.01, which
173 shall be paid to and collected by the department or its agent
174 upon the registration or renewal of registration of the
175 following:

176 (1) MOTORCYCLES AND MOPEDS.—
177 (a) Any motorcycle: $10 flat.
178 (b) Any moped: $5 flat.
179 (c) Upon registration of a motorcycle, motor-driven cycle,
180 or moped, in addition to the license taxes specified in this
181 subsection, a nonrefundable motorcycle safety education fee in
182 the amount of $2.50 shall be paid. The proceeds of such
183 additional fee shall be deposited in the Highway Safety
184 Operating Trust Fund to fund a motorcycle driver improvement
185 program implemented pursuant to s. 322.025, the Florida
186 Motorcycle Safety Education Program established in s. 322.0255,
187 or the general operations of the department.
188 (d) An ancient or antique motorcycle: $7.50 flat, of which
189 $2.50 shall be deposited into the General Revenue Fund.
190 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—
191 (a) An ancient or antique automobile, as defined in s.
192 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.
193 (b) Net weight of less than 2,500 pounds: $14.50 flat.
194 (c) Net weight of 2,500 pounds or more, but less than
195 3,500 pounds: $22.50 flat.
196 (d) Net weight of 3,500 pounds or more: $32.50 flat.
197 (3) TRUCKS.—
198 (a) Net weight of less than 2,000 pounds: $14.50 flat.
199 (b) Net weight of 2,000 pounds or more, but not more than
200 3,000 pounds: $22.50 flat.

201 (c) Net weight more than 3,000 pounds, but not more than
202 5,000 pounds: $32.50 flat.
203 (d) A truck defined as a "goat," or other vehicle if used
204 in the field by a farmer or in the woods for the purpose of
205 harvesting a crop, including naval stores, during such
206 harvesting operations, and which is not principally operated
207 upon the roads of the state: $7.50 flat. The term "goat" means a
208 motor vehicle designed, constructed, and used principally for
209 the transportation of citrus fruit within citrus groves or for
210 the transportation of crops on farms, and which can also be used
211 for hauling associated equipment or supplies, including required
212 sanitary equipment, and the towing of farm trailers.
213 (e) An ancient or antique truck, as defined in s. 320.086:
214 $7.50 flat.
215 (4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS
216 VEHICLE WEIGHT.—
217 (a) Gross vehicle weight of 5,001 pounds or more, but less
218 than 6,000 pounds: $60.75 flat, of which $15.75 shall be
219 deposited into the General Revenue Fund.
220 (b) Gross vehicle weight of 6,000 pounds or more, but less
221 than 8,000 pounds: $87.75 flat, of which $22.75 shall be
222 deposited into the General Revenue Fund.
223 (c) Gross vehicle weight of 8,000 pounds or more, but less
224 than 10,000 pounds: $103 flat, of which $27 shall be deposited
225 into the General Revenue Fund.

226 (d) Gross vehicle weight of 10,000 pounds or more, but
227 less than 15,000 pounds: $118 flat, of which $31 shall be
228 deposited into the General Revenue Fund.
229 (e) Gross vehicle weight of 15,000 pounds or more, but
230 less than 20,000 pounds: $177 flat, of which $46 shall be
231 deposited into the General Revenue Fund.
232 (f) Gross vehicle weight of 20,000 pounds or more, but
233 less than 26,001 pounds: $251 flat, of which $65 shall be
234 deposited into the General Revenue Fund.
235 (g) Gross vehicle weight of 26,001 pounds or more, but
236 less than 35,000: $324 flat, of which $84 shall be deposited
237 into the General Revenue Fund.
238 (h) Gross vehicle weight of 35,000 pounds or more, but
239 less than 44,000 pounds: $405 flat, of which $105 shall be
240 deposited into the General Revenue Fund.
241 (i) Gross vehicle weight of 44,000 pounds or more, but
242 less than 55,000 pounds: $773 flat, of which $201 shall be
243 deposited into the General Revenue Fund.
244 (j) Gross vehicle weight of 55,000 pounds or more, but
245 less than 62,000 pounds: $916 flat, of which $238 shall be
246 deposited into the General Revenue Fund.
247 (k) Gross vehicle weight of 62,000 pounds or more, but
248 less than 72,000 pounds: $1,080 flat, of which $280 shall be
249 deposited into the General Revenue Fund.
250 (l) Gross vehicle weight of 72,000 pounds or more: $1,322

251 flat, of which $343 shall be deposited into the General Revenue
252 Fund.
253 (m) Notwithstanding the declared gross vehicle weight, a
254 truck tractor used within a 150-mile radius of its home address
255 is eligible for a license plate for a fee of $324 flat if:
256 1. The truck tractor is used exclusively for hauling
257 forestry products; or
258 2. The truck tractor is used primarily for the hauling of
259 forestry products, and is also used for the hauling of
260 associated forestry harvesting equipment used by the owner of
261 the truck tractor.
262
263 Of the fee imposed by this paragraph, $84 shall be deposited
264 into the General Revenue Fund.
265 (n) A truck tractor or heavy truck, not operated as a for-
266 hire vehicle, which is engaged exclusively in transporting raw,
267 unprocessed, and nonmanufactured agricultural or horticultural
268 products within a 150-mile radius of its home address, is
269 eligible for a restricted license plate for a fee of:
270 1. If such vehicle's declared gross vehicle weight is less
271 than 44,000 pounds, $87.75 flat, of which $22.75 shall be
272 deposited into the General Revenue Fund.
273 2. If such vehicle's declared gross vehicle weight is
274 44,000 pounds or more and such vehicle only transports from the
275 point of production to the point of primary manufacture; to the

276 point of assembling the same; or to a shipping point of a rail,
277 water, or motor transportation company, $324 flat, of which $84
278 shall be deposited into the General Revenue Fund.
279
280 Such not-for-hire truck tractors and heavy trucks used
281 exclusively in transporting raw, unprocessed, and
282 nonmanufactured agricultural or horticultural products may be
283 incidentally used to haul farm implements and fertilizers
284 delivered direct to the growers. The department may require any
285 documentation deemed necessary to determine eligibility prior to
286 issuance of this license plate. For the purpose of this
287 paragraph, "not-for-hire" means the owner of the motor vehicle
288 must also be the owner of the raw, unprocessed, and
289 nonmanufactured agricultural or horticultural product, or the
290 user of the farm implements and fertilizer being delivered.
291 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
292 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—
293 (a)1. A semitrailer drawn by a GVW truck tractor by means
294 of a fifth-wheel arrangement: $13.50 flat per registration year
295 or any part thereof, of which $3.50 shall be deposited into the
296 General Revenue Fund.
297 2. A semitrailer drawn by a GVW truck tractor by means of
298 a fifth-wheel arrangement: $68 flat per permanent registration,
299 of which $18 shall be deposited into the General Revenue Fund.
300 (b) A motor vehicle equipped with machinery and designed

301 for the exclusive purpose of well drilling, excavation,
302 construction, spraying, or similar activity, and which is not
303 designed or used to transport loads other than the machinery
304 described above over public roads: $44 flat, of which $11.50
305 shall be deposited into the General Revenue Fund.
306 (c) A school bus used exclusively to transport pupils to
307 and from school or school or church activities or functions
308 within their own county: $41 flat, of which $11 shall be
309 deposited into the General Revenue Fund.
310 (d) A wrecker, as defined in s. 320.01, which is used to
311 tow a vessel as defined in s. 327.02, a disabled, abandoned,
312 stolen-recovered, or impounded motor vehicle as defined in s.
313 320.01, or a replacement motor vehicle as defined in s. 320.01:
314 $41 flat, of which $11 shall be deposited into the General
315 Revenue Fund.
316 (e) A wrecker that is used to tow any nondisabled motor
317 vehicle, a vessel, or any other cargo unless used as defined in
318 paragraph (d), as follows:
319 1. Gross vehicle weight of 10,000 pounds or more, but less
320 than 15,000 pounds: $118 flat, of which $31 shall be deposited
321 into the General Revenue Fund.
322 2. Gross vehicle weight of 15,000 pounds or more, but less
323 than 20,000 pounds: $177 flat, of which $46 shall be deposited
324 into the General Revenue Fund.
325 3. Gross vehicle weight of 20,000 pounds or more, but less

326 than 26,000 pounds: $251 flat, of which $65 shall be deposited
327 into the General Revenue Fund.
328 4. Gross vehicle weight of 26,000 pounds or more, but less
329 than 35,000 pounds: $324 flat, of which $84 shall be deposited
330 into the General Revenue Fund.
331 5. Gross vehicle weight of 35,000 pounds or more, but less
332 than 44,000 pounds: $405 flat, of which $105 shall be deposited
333 into the General Revenue Fund.
334 6. Gross vehicle weight of 44,000 pounds or more, but less
335 than 55,000 pounds: $772 flat, of which $200 shall be deposited
336 into the General Revenue Fund.
337 7. Gross vehicle weight of 55,000 pounds or more, but less
338 than 62,000 pounds: $915 flat, of which $237 shall be deposited
339 into the General Revenue Fund.
340 8. Gross vehicle weight of 62,000 pounds or more, but less
341 than 72,000 pounds: $1,080 flat, of which $280 shall be
342 deposited into the General Revenue Fund.
343 9. Gross vehicle weight of 72,000 pounds or more: $1,322
344 flat, of which $343 shall be deposited into the General Revenue
345 Fund.
346 (f) A hearse or ambulance: $40.50 flat, of which $10.50
347 shall be deposited into the General Revenue Fund.
348 (6) MOTOR VEHICLES FOR HIRE.—
349 (a) Under nine passengers: $17 flat, of which $4.50 shall
350 be deposited into the General Revenue Fund; plus $1.50 per cwt,

351 of which 50 cents shall be deposited into the General Revenue
352 Fund.
353 (b) Nine passengers and over: $17 flat, of which $4.50
354 shall be deposited into the General Revenue Fund; plus $2 per
355 cwt, of which 50 cents shall be deposited into the General
356 Revenue Fund.
357 (7) TRAILERS FOR PRIVATE USE.—
358 (a) Any trailer weighing 500 pounds or less: $6.75 flat
359 per year or any part thereof, of which $1.75 shall be deposited
360 into the General Revenue Fund.
361 (b) Net weight over 500 pounds: $3.50 flat, of which $1
362 shall be deposited into the General Revenue Fund; plus $1 per
363 cwt, of which 25 cents shall be deposited into the General
364 Revenue Fund.
365 (8) TRAILERS FOR HIRE.—
366 (a) Net weight under 2,000 pounds: $3.50 flat, of which $1
367 shall be deposited into the General Revenue Fund; plus $1.50 per
368 cwt, of which 50 cents shall be deposited into the General
369 Revenue Fund.
370 (b) Net weight 2,000 pounds or more: $13.50 flat, of which
371 $3.50 shall be deposited into the General Revenue Fund; plus
372 $1.50 per cwt, of which 50 cents shall be deposited into the
373 General Revenue Fund.
374 (9) RECREATIONAL VEHICLE-TYPE UNITS.—
375 (a) A travel trailer or fifth-wheel trailer, as defined by

376 s. 320.01(1)(b), that does not exceed 35 feet in length: $27
377 flat, of which $7 shall be deposited into the General Revenue
378 Fund.
379 (b) A camping trailer, as defined by s. 320.01(1)(b)2.:
380 $13.50 flat, of which $3.50 shall be deposited into the General
381 Revenue Fund.
382 (c) A motor home, as defined by s. 320.01(1)(b)4.:
383 1. Net weight of less than 4,500 pounds: $27 flat, of
384 which $7 shall be deposited into the General Revenue Fund.
385 2. Net weight of 4,500 pounds or more: $47.25 flat, of
386 which $12.25 shall be deposited into the General Revenue Fund.
387 (d) A truck camper as defined by s. 320.01(1)(b)3.:
388 1. Net weight of less than 4,500 pounds: $27 flat, of
389 which $7 shall be deposited into the General Revenue Fund.
390 2. Net weight of 4,500 pounds or more: $47.25 flat, of
391 which $12.25 shall be deposited into the General Revenue Fund.
392 (e) A private motor coach as defined by s. 320.01(1)(b)5.:
393 1. Net weight of less than 4,500 pounds: $27 flat, of
394 which $7 shall be deposited into the General Revenue Fund.
395 2. Net weight of 4,500 pounds or more: $47.25 flat, of
396 which $12.25 shall be deposited into the General Revenue Fund.
397 (10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS;
398 35 FEET TO 40 FEET.—
399 (a) Park trailers.—Any park trailer, as defined in s.
400 320.01(1)(b)7.: $25 flat.

401 (b) Travel trailers or fifth-wheel trailers.—A travel
402 trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b),
403 that exceeds 35 feet: $25 flat.
404 (11) MOBILE HOMES.—
405 (a) A mobile home not exceeding 35 feet in length: $20
406 flat.
407 (b) A mobile home over 35 feet in length, but not
408 exceeding 40 feet: $25 flat.
409 (c) A mobile home over 40 feet in length, but not
410 exceeding 45 feet: $30 flat.
411 (d) A mobile home over 45 feet in length, but not
412 exceeding 50 feet: $35 flat.
413 (e) A mobile home over 50 feet in length, but not
414 exceeding 55 feet: $40 flat.
415 (f) A mobile home over 55 feet in length, but not
416 exceeding 60 feet: $45 flat.
417 (g) A mobile home over 60 feet in length, but not
418 exceeding 65 feet: $50 flat.
419 (h) A mobile home over 65 feet in length: $80 flat.
420 (12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised
421 motor vehicle dealer, independent motor vehicle dealer, marine
422 boat trailer dealer, or mobile home dealer and manufacturer
423 license plate: $17 flat, of which $4.50 shall be deposited into
424 the General Revenue Fund.
425 (13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or

426 official license plate: $4 flat, of which $1 shall be deposited
427 into the General Revenue Fund, except that the registration or
428 renewal of a registration of a marine boat trailer exempt under
429 s. 320.102 is not subject to any license tax.
430 (14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor
431 vehicle for hire operated wholly within a city or within 25
432 miles thereof: $17 flat, of which $4.50 shall be deposited into
433 the General Revenue Fund; plus $2 per cwt, of which 50 cents
434 shall be deposited into the General Revenue Fund.
435 (15) TRANSPORTER.—Any transporter license plate issued to
436 a transporter pursuant to s. 320.133: $101.25 flat, of which
437 $26.25 shall be deposited into the General Revenue Fund.
438 Section 10. Subsection (1) of section 655.960, Florida
439 Statutes, is amended to read:
440 655.960 Definitions; ss. 655.960-655.965.—As used in this
441 section and ss. 655.961-655.965, unless the context otherwise
442 requires:
443 (1) "Access area" means any paved walkway or sidewalk
444 which is within 50 feet of any automated teller machine. The
445 term does not include any street or highway open to the use of
446 the public, as defined in s. 316.003(80)(a) ~~316.003(79)(a)~~ or
447 (b), including any adjacent sidewalk, as defined in s. 316.003.
448 Section 11. This act shall take effect July 1, 2018.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Public Records
SPONSOR(S): Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:** SB 750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N	Moore	Harrington
2) Government Accountability Committee		Moore	Williamson

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government, unless such record is specifically exempt. The Florida Statutes further provide that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency to provide access to public records. A custodian of public records (records custodian) is required to permit any person to inspect and copy records at any reasonable time, under reasonable conditions, and under supervision by the records custodian.

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency[1] to provide access to public records.[2] Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records[3] (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,[4] under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.[5]

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.[6] Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.[7]

---

[1] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any agency.

[2] Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

[3] Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

[4] There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

[5] *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

[6] *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

[7] Section 119.07(4), F.S.; *see also Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

Effect of the Bill

The bill prohibits an agency that receives a public record request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request.

B. SECTION DIRECTORY:

Section 1. amends s. 119.07, F.S., relating to inspection and copying of records; photographing public records; fees; exemptions.

Section 2. provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by an agency.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to public records; amending s. 119.07,
3 F.S.; prohibiting an agency that receives a request to
4 inspect or copy a record from responding to such
5 request by filing a civil action against the
6 individual or entity making the request; providing an
7 effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (j) is added to subsection (1) of
12 section 119.07, Florida Statutes, to read:
13 119.07 Inspection and copying of records; photographing
14 public records; fees; exemptions.—
15 (1)
16 (j) An agency that receives a request to inspect or copy a
17 record is prohibited from responding to such request by filing a
18 civil action against the individual or entity making the
19 request.
20 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 359 State Investments
SPONSOR(S): Nuñez, Diaz, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 70, SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N	Moore	Harrington
2) Ways & Means Committee	18 Y, 0 N	Aldridge	Langston
3) Government Accountability Committee		Moore	Williamson

SUMMARY ANALYSIS

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer (CFO), and the Attorney General. The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan, which represent approximately $168.8 billion, or 86.3 percent, of the $195.7 billion in assets managed by the SBA as of October 26, 2017.

The CFO is the head of the Department of Financial Services and is the constitutional officer with fiduciary responsibility over the State Treasury. The CFO is required to fully invest or deposit all general revenue, trust funds, and funds of each state agency and the judicial branch in a manner that allows the state to realize maximum earnings and benefits. Such funds are managed by the Division of Treasury and are invested as the Treasury Investment Pool. As of September 2017, the Treasury Investment Pool contained $23.4 billion in assets.

In recent years, the federal government has imposed various sanctions on the government of Venezuela. On August 24, 2017, President Trump signed Executive Order 13808 to prohibit United States persons and entities from engaging in certain financial transactions with the government of Venezuela.

The bill requires the SBA to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with any agency or instrumentality thereof, in violation of federal law. The bill also prohibits the SBA from investing in such stocks, securities, or other obligations.

The bill prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S. which, directly or through the U.S. foreign subsidiary, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

The bill defines the term "government of Venezuela" to mean the government of Venezuela, its agencies or instrumentalities, or any company that is majority-owned or controlled by the government of Venezuela.

The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact state or local government revenues. The bill may have an insignificant negative impact on state government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration
The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer (CFO), and the Attorney General. The board members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,[1] which represent approximately $168.8 billion, or 86.3 percent, of the $195.7 billion in assets managed by the SBA as of October 26, 2017.[2] The SBA also manages more than 30 other investment portfolios with combined assets of $26.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.[3]

The Trustees, at the August 16, 2017, Cabinet meeting, passed a resolution to add the following language to the SBA's Investment Policy Statement for the FRS:

1. Prohibited Investments. Until such as time as the SBA determines it is otherwise prudent to do so, the SBA is prohibited from investing in:
   a. any financial institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, which directly or through a United States or foreign subsidiary and in violation of federal law, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services in or with the government of Venezuela; and
   b. any securities issued by the government of Venezuela or any company that is majority-owned by the government of Venezuela.
2. Proxy Voting. The SBA will not vote in favor of any proxy resolution advocating the support of the Maduro Regime in Venezuela.[4]

The SBA's Investment Advisory Council formally recommended that the language be added to the FRS Investment Policy Statement at its meeting on September 25, 2017. The Trustees accepted the updated Investment Policy Statement at their October 17, 2017, meeting.

State Treasury
The CFO is the head of the Department of Financial Services (DFS) and is the constitutional officer with fiduciary responsibility over the State Treasury. Florida law requires all moneys collected by state agencies, boards, bureaus, commissions, institutions, and departments to be deposited in the State Treasury.[5] The CFO is required to fully invest or deposit all general revenue, trust funds, and funds of each state agency and the judicial branch in a manner that allows the state to realize maximum

---

[1] Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.

[2] State Board of Administration, Agency Analysis of 2018 Senate Bill 538, p. 1 (Nov. 2, 2017). The provisions in Senate Bill 538 are substantively the same as the provisions in House Bill 359.

[3] *Id.*

[4] *Id.*

[5] Section 17.58(1), F.S.

earnings and benefits.[6] Such funds are managed by the Division of Treasury and are invested as the Treasury Investment Pool. As of September 2017, the Treasury Investment Pool contained $23.4 billion in assets.[7]

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

State Divestment Laws

The state has practiced divestment several times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest of companies doing business with South Africa. From 1988 to 2015, the Legislature placed restrictions on investments in any institution or company doing business in or with Northern Ireland. From 1993 to the present, the Legislature required the SBA to divest of companies doing business in or with Cuba and prohibited state agencies from investing in companies engaging in certain business activities with Cuba. From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies. From 2007 to the present, the Legislature has directed the SBA to divest funds from companies that are actively seeking and providing certain business opportunities with Iran and Sudan.[8]

Federal Venezuela Sanctions

In recent years, the federal government has imposed various sanctions on the government of Venezuela. On August 24, 2017, President Trump signed Executive Order 13808 to prohibit U.S. persons and entities from engaging in transactions involving the following:

- New debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA), Venezuela's state-owned oil company;
- New debt with a maturity of greater than 30 days, or new equity, of the government of Venezuela, other than debt of PdVSA as defined above;
- Bonds issued by the government of Venezuela prior to August 25, 2017;
- Dividend payments or other distributions of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela; and
- The purchase, directly or indirectly, of securities from the government of Venezuela, other than security qualifying as new debt with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the government of Venezuela).[9]

The executive order defined the term "government of Venezuela" to mean the government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, and any person or entity owned or controlled by, or acting for or on behalf of, the government of Venezuela.[10]

Effect of Proposed Changes

The bill requires the SBA to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with any agency or instrumentality thereof,

---

[6] Sections 17.61(1) and 17.57(1), F.S.

[7] Division of Treasury, *Florida Treasury Investment Pool Holdings as of September 2017*, https://www.myfloridacfo.com/Division/Treasury/InvestmentPool/documents/FLTreasuryInvHoldingsSeptember2017.pdf (last visited Nov. 9, 2017).

[8] *See* s. 215.473, F.S.

[9] Exec. Order No. 13808, 3 C.F.R. 41155 (2017).

[10] *Id.* at 41156.

in violation of federal law. The bill also prohibits the SBA from investing in such stocks, securities, or other obligations. In addition, the bill provides that the SBA may not be a fiduciary with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded U.S. trade with Venezuela.

The bill also prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S. which, directly or through the U.S. foreign subsidiary, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

The bill defines the term "government of Venezuela" to mean the government of Venezuela, its agencies or instrumentalities, or any company that is majority-owned or controlled by the government of Venezuela.

The bill authorizes the Governor to waive the bill's requirements if the existing regime in Venezuela collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

According to the SBA and DFS, the agencies do not currently invest in any companies that are in violation of federal law as specified in the bill.[11]

B. SECTION DIRECTORY:

Section 1. amends s. 215.471, F.S., relating to divestiture by the SBA; reporting requirements.

Section 2. amends s. 215.472, F.S., relating to prohibited investments.

Section 3. provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact state government revenues.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on the SBA related to conducting research. The SBA, however, will absorb these costs.[12]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not evaluated the bill for potential revenue impacts. However, the bill does not appear to impact local government revenues.

---

[11] Telephone conversation between House Oversight, Transparency & Administration Subcommittee and SBA staff (Nov. 6, 2017); Telephone conversation between House Oversight, Transparency & Administration Subcommittee and DFS staff (Nov. 9, 2017).

[12] State Board of Administration, Agency Analysis of 2018 Senate Bill 538, p. 3 (Nov. 2, 2017). The provisions in Senate Bill 538 are substantively the same as the provisions in House Bill 359.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,[13] maintain a military,[14] enter into treaties and other international agreements,[15] regulate foreign commerce,[16] and to hear cases involving foreign states and citizens.[17] These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.[18] When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid.[19]

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

---

[13] Section 8, Art. I, U.S. Constitution.
[14] *Id.*
[15] Section 2, Art. II, U.S. Constitution.
[16] Section 8, Art. I, U.S. Constitution.
[17] Section 2, Art. III, U.S. Constitution.
[18] *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").
[19] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

1 A bill to be entitled
2 An act relating to state investments; amending s.
3 215.471, F.S.; requiring the State Board of
4 Administration to divest specified investments and
5 prohibiting it from investing in specified investments
6 of institutions or companies doing business in or with
7 the government of Venezuela or any of its agencies or
8 instrumentalities in violation of federal law;
9 defining the term "government of Venezuela";
10 authorizing the Governor to waive the investment
11 prohibitions if certain conditions exist; prohibiting
12 the State Board of Administration from voting in favor
13 of any proxy resolution advocating expanded United
14 States trade with the government of Venezuela;
15 amending s. 215.472, F.S.; prohibiting state agencies
16 from investing in specified financial entities that
17 extend credit, trade or buy goods or services with the
18 government of Venezuela or investing in any company
19 doing business with Venezuela in violation of federal
20 law; defining the term "government of Venezuela";
21 authorizing the Governor to waive the investment
22 prohibitions under specific circumstances; providing
23 an effective date.
24

25 WHEREAS, the people of Venezuela believe the current
26 government of Venezuela is intolerable because it has used and
27 continues to use extreme violence and political persecution in
28 the orchestrated suppression of human rights, and
29 WHEREAS, the Maduro regime continues to unjustly detain and
30 prosecute political prisoners in spite of international calls
31 for their freedom, and
32 WHEREAS, the State of Florida stands in unity with the
33 people of Venezuela in their fight for democracy and freedom
34 from the oppressive Maduro regime, and
35 WHEREAS, the United States deems the situation in Venezuela
36 as an extraordinary threat to national security and foreign
37 policy, and
38 WHEREAS, the United States Department of the Treasury's
39 Office of Foreign Assets Control has issued sanctions against
40 Venezuelan officials, including Nicolás Maduro who has been
41 identified as a "Specially Designated National" and labeled a
42 dictator, NOW, THEREFORE,
43
44 Be It Enacted by the Legislature of the State of Florida:
45
46 Section 1. Section 215.471, Florida Statutes, is amended
47 to read:
48 215.471 Divestiture by the State Board of Administration;
49 reporting requirements.—

50 (1) The State Board of Administration shall divest any
51 investment under s. 121.151 and ss. 215.44-215.53, and is
52 prohibited from investment in stocks, securities, or other
53 obligations of:
54 (a) Any institution or company domiciled in the United
55 States, or foreign subsidiary of a company domiciled in the
56 United States, doing business in or with Cuba, or with agencies
57 or instrumentalities thereof in violation of federal law.
58 (b) Any institution or company domiciled outside of the
59 United States if the President of the United States has applied
60 sanctions against the foreign country in which the institution
61 or company is domiciled pursuant to s. 4 of the Cuban Democracy
62 Act of 1992.
63 (c)1. Any institution or company domiciled in the United
64 States, or foreign subsidiary of a company domiciled in the
65 United States, doing business in or with the government of
66 Venezuela, or with any agency or instrumentality thereof, in
67 violation of federal law. The term "government of Venezuela"
68 means the government of Venezuela, its agencies or
69 instrumentalities, or any company that is majority-owned or
70 controlled by the government of Venezuela.
71 2. The Governor may waive the requirements of this
72 paragraph if the existing regime in Venezuela collapses and
73 there is a need for immediate aid to Venezuela before the
74 convening of the Legislature or for other humanitarian reasons

75 as determined by the Governor.
76 (2) The State Board of Administration may not be a
77 fiduciary under this section with respect to voting on, and may
78 not have the right to vote in favor of, any proxy resolution
79 advocating expanded United States trade with Cuba, ~~or~~ Syria, or
80 Venezuela. The board's staff shall report on its activities in
81 its annual proxy voting report.
82 Section 2. Subsection (3) is added to section 215.472,
83 Florida Statutes, to read:
84 215.472 Prohibited investments.—Notwithstanding any other
85 provision of law, each state agency, as defined in s. 216.011,
86 is prohibited from investing in:
87 (3)(a) Any financial institution or company domiciled in
88 the United States, or foreign subsidiary of a company domiciled
89 in the United States which, directly or through the United
90 States or foreign subsidiary, extends credit of any kind or
91 character, advances funds in any manner, or purchases or trades
92 any goods or services with the government of Venezuela, or any
93 company doing business in or with the government of Venezuela,
94 in violation of federal law. The term "government of Venezuela"
95 means the government of Venezuela, its agencies or
96 instrumentalities, or any company that is majority-owned or
97 controlled by the government of Venezuela.
98 (b) The Governor may waive the requirements of this
99 subsection if the existing regime in Venezuela collapses and

100 there is a need for immediate aid to Venezuela before the
101 convening of the Legislature or for other humanitarian reasons
102 as determined by the Governor.
103 Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7011 PCB OTA 18-01 OGSR/School Food and Nutrition Service Program
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Davis
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Harrington	Harrington
1) Government Accountability Committee		Harrington	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Agriculture and Consumer Services (DACS) is the state administrator of school food and nutrition service programs. Such programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS. Applicants for school food and nutrition service programs must provide certain personal information to DACS and the Department of Education (DOE). Some of the information provided for purposes of determining eligibility for participation in the school food and nutrition service programs is considered to be of a sensitive, personal nature.

Current law provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program held by DACS, DOE, or the Department of Children and Families is exempt from public record requirements. Such information must be disclosed to another governmental entity in the performance of its official duties and responsibilities or to any person who has the written consent of the applicant for or participant in such program.

The bill reenacts and narrows the application of the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

School Food and Nutrition Service Program

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.[6] The United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.[7] The Department of Agriculture and Consumer Services (DACS) is the state administrator of school food and nutrition service programs. Such programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS.[8]

Current law requires applicants for or participants in school food and nutrition service programs to provide certain personal information to DACS and the Department of Education (DOE). In addition, the Department of Children and Families (DCF) receives information from the United States Social Security Administration and determines Medicaid eligibility for Florida and forwards that information to DACS

---

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I of the State Constitution.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] *See* Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq).
[7] 42 U.S.C. 1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A); *see also* USDA Income Eligibility Guidelines found online at: https://www.fns.usda.gov/school-meals/income-eligibility-guidelines (last visited November 6, 2017).
[8] Section 595.402, F.S.

and local education agencies for a determination of whether a student is eligible for participation in a school food and nutrition service program. Although DCF shares certain information with DACS, DCF does not receive information related to applicants for or participants in school food and nutrition service programs.

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition program held by DACS, DOE, and DCF. The personal identifying information is exempt[9] from public record requirements.[10]

The 2013 public necessity statement for the exemption provided that:

> A public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by [DACS, DCF, or DOE] protects information of a sensitive, personal nature concerning an individual, the release of which could be defamatory to the individual, could cause unwarranted damage to his or her good name or reputation, and could possibly jeopardize the safety of the individual. Additionally, the public records exemption allows the state to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.[11]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.[12]

During the 2017 interim, subcommittee staff sent DACS, DOE, and DCF questionnaires and consulted with staff from the departments as part of its review under the Open Government Sunset Review Act. DOE and DACS recommended that the exemption be reenacted noting that the exemption has allowed the departments to properly operate the program while preventing the disclosure of a student's or parent's personal identifying information. DCF indicated that it does not hold personal identifying information of an applicant for or participant in a school food and nutrition service program. As such, DCF did not oppose narrowing the application of the exemption to remove DCF from the exemption.

Effect of the Bill

The bill removes the repeal date thereby reenacting the public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program held by DACS and DOE. The bill also narrows the exemption removing reference to information held by DCF as that department does not hold information relating to applicants for or participants in a school food and nutrition service program.

B. SECTION DIRECTORY:

Section 1 amends s. 595.409, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program.

---

[9] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[10] Chapter 2013-217, L.O.F.; codified as s. 595.409(1), F.S.

[11] Section 2, ch. 2013-217, L.O.F.

[12] Section 595.409(4), F.S.

Section 2 provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 595.409, F.S., relating
4 to an exemption from public record requirements for
5 personal identifying information of an applicant for
6 or participant in a school food and nutrition service
7 program; removing applicability of the exemption to
8 such information held by the Department of Children
9 and Families; removing the scheduled repeal of the
10 exemption; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 595.409, Florida Statutes, is amended
15 to read:
16 595.409 Public records exemption.—
17 (1) Personal identifying information of an applicant for
18 or participant in a school food and nutrition service program,
19 as defined in s. 595.402, held by the department~~, the Department~~
20 ~~of Children and Families,~~ or the Department of Education is
21 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
22 Constitution.
23 (2)(a) Such information shall be disclosed to:
24 1. Another governmental entity in the performance of its
25 official duties and responsibilities; or

26 2. Any person who has the written consent of the applicant
27 for or participant in such program.
28 (b) This section does not prohibit a participant's legal
29 guardian from obtaining confirmation of acceptance and approval,
30 dates of applicability, or other information the legal guardian
31 may request.
32 (3) This exemption applies to any information identifying
33 a program applicant or participant held by the department~~, the~~
34 ~~Department of Children and Families,~~ or the Department of
35 Education before, on, or after the effective date of this
36 exemption.
37 ~~(4) This section is subject to the Open Government Sunset~~
38 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
39 ~~on October 2, 2018, unless reviewed and saved from repeal~~
40 ~~through reenactment by the Legislature.~~
41 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB OTA 18-02 OGSR/False Claims
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 7006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Harrington	Harrington
1) Government Accountability Committee		Harrington	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida False Claims Act (FFCA) authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. These types of actions were recognized at common law and have historically been called "qui tam" actions. The Department of Financial Services or the Department of Legal Affairs (DLA) may bring an action for a false claim, or may join a private action.

Current law provides that the complaint and information held by DLA pursuant to an investigation of a violation of the FFCA are confidential and exempt from public record requirements. Such information may be disclosed by DLA to a law enforcement agency or other administrative agency in the performance of its official duties and responsibilities. The exemption expires once the investigation is completed.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

Florida False Claims Act

The Florida False Claims Act (FFCA) authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency.[6] These types of actions were recognized at common law and have historically been called "qui tam" actions. The Legislature enacted the FFCA in 1994 and modeled the FFCA after the Federal Civil False Claims Act. Actions that violate the FFCA include:

- Knowingly presenting or causing to be presented a false claim for payment or approval;
- Knowingly making, using, or causing to be used a false record to get a false or fraudulent claim paid or approved;
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid;
- Possessing or controlling property or money used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property;
- Intending to defraud the state, making or delivering a document certifying receipt of property used or to be used by the state and making or delivering the receipt without knowing that the information on the receipt is true;

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I of the State Constitution.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] Section 68.081, F.S. The FFCA is found in ss. 68.081-68.092, F.S.

- Knowingly buying or receiving, as a pledge of obligation or a debt, public property from an officer or employee of the sate who may not sell or pledge the property; or
- Knowingly making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing payments owed to the state.[7]

An action for a false claim may be brought by the Department of Legal Affairs (DLA), the Department of Financial Services (DFS), or by any person.[8] Generally, such actions are brought by individuals rather than the departments. When an individual files an action, the complaint must be identified as a qui tam action and filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon filing the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses must be served on the Attorney General, as head of DLA, and on the Chief Financial Officer, as head of DFS. DLA, or DFS if the action is based on facts underlying a pending investigation by DFS, may elect to intervene and proceed on behalf of the state within 60 days.[9] DFS may bring an action only if the action arises from an investigation by DFS and DLA has not filed an action.[10]

The penalty for violating the FFCA is $5,500 to $11,000 per claim, plus three times the amount of damages to the state for the FFCA violation.[11] The person who brought the action, if not initiated by DLA or DFS, is entitled to a percent of the proceeds of the action or settlement of the claim. The amount varies depending on whether DLA proceeds with the action or elects not to intervene.[12]

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for the complaint and information held by DLA pursuant to an investigation of a violation of the FFCA. The complaint and information are confidential and exempt[13] from public record requirements.[14] Such information may be disclosed by DLA to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. In addition, such information is no longer confidential and exempt once the investigation is completed.

The 2013 public necessity statement for the exemption provided that:

> Because a false claims investigation conducted by [DLA] may lead to the filing of an administrative or civil proceeding, the premature release of the complaint and information held by the department could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer its duties under the [FFCA]. This exemption also protects the reputation of the named defendant in the event the allegations of the qui tam complaint ultimately prove to be unfounded. Without this exemption, a plaintiff can subject a

[7] Section 68.082(2), F.S.
[8] Sections 68.083 and 68.084, F.S.
[9] Section 68.083(3) and (4), F.S.
[10] *Id.*
[11] Section 68.082(2), F.S.
[12] Section 68.085, F.S.
[13] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).
[14] Chapter 2013-105, L.O.F.; codified as s. 68.083(8), F.S.

defendant to serious fraud allegations in the name of the State of Florida merely by filing a qui tam complaint.[15]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.[16]

During the 2017 interim, subcommittee staff consulted with staff from DLA as part of its review under the Open Government Sunset Review Act. According to DLA, the exemption allows DLA to complete the investigation without compromising the integrity of the investigation, which is necessary to implement the FFCA to prevent fraud, waste, and abuse of state funds. As such, DLA supports reenactment of the public record exemption.

Effect of the Bill

The bill removes the repeal date thereby reenacting the public record exemption for the complaint and information held by DLA pursuant to an investigation of a violation of the FFCA.

B. SECTION DIRECTORY:

Section 1 amends s. 68.083, F.S., to save from repeal the public record exemption for the complaint and information held by DLA pursuant to an investigation of a violation of the FFCA.

Section 2 provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

---

[15] Section 2, ch. 2013-105, L.O.F.

[16] Section 68.083(8)(a), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 68.083, F.S., relating
4 to an exemption from public record requirements for
5 the complaint and information held by the Department
6 of Legal Affairs pursuant to an investigation of a
7 violation of the Florida False Claims Act; removing
8 the scheduled repeal of the exemption; providing an
9 effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (a) of subsection (8) of section
14 68.083, Florida Statutes, is amended to read:
15 68.083 Civil actions for false claims.—
16 (8)(a) Except as otherwise provided in this subsection,
17 the complaint and information held by the department pursuant to
18 an investigation of a violation of s. 68.082 is confidential and
19 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
20 Constitution. ~~This paragraph is subject to the Open Government~~
21 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
22 ~~repealed on October 2, 2018, unless reviewed and saved from~~
23 ~~repeal through reenactment by the Legislature.~~
24 Section 2. This act shall take effect October 1, 2018.

PCB GAC 18-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 18-01 Election Dates for Municipal Office
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Toliver	Williamson

SUMMARY ANALYSIS

Under current law, elections for members of a municipality's governing body are conducted during the general election in November of even-numbered years unless the governing body of the municipality adopts an ordinance to change the date. A municipality that changes its election date is authorized to provide for the orderly transition of office resulting from the date change.

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers and provides the exclusive method for establishing those dates. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates to hold its elections: the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the third Tuesday in March in an odd-numbered or even-numbered year. The bill sets a format for runoff elections and allows elected municipal officers to continue in office until the next municipal election held in accordance with the bill.

The provisions of the bill that establish the method of selecting municipal election dates do not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election.

Lastly, the bill repeals s. 101.75, F.S., which allows a municipality to change its election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

The bill does not appear to have a fiscal impact on the state, but it may reduce or increase election costs for certain municipalities.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article VI, s. 5(a) of the Florida Constitution requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election. Section 100.031, F.S., incorporates that constitutional provision into statute, but also requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal and district officer whose term will expire before the next general election.

Article VI, s. 6 of the Florida Constitution provides that registration and elections in municipalities must, and in other governmental entities created by statute may, be provided by general law. The Florida Election Code,[1] which is a collection of general laws, governs the conduct of municipal elections in the absence of an applicable special act, charter, or ordinance.[2] However, no act, charter, or ordinance may be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.[3]

Elections for municipal officers are conducted during the general election in November of even-numbered years unless the governing body of a municipality has adopted an ordinance to change the dates for qualifying and for the election of members of the governing body of the municipality.[4] The ordinance may also provide for the orderly transition of office resulting from the date changes.[5]

Section 101.75, F.S., allows the governing body of a municipality to move the date of any municipal election to a date concurrent with any statewide or countywide election provided the election date and dates for qualifying for the election are specifically provided for in the ordinance.[6] However, if the voting devices used in the county are not available to the municipality during the statewide or countywide election, the municipality may provide that its election will be held 30 days before or after the statewide or countywide election.[7]

Any member of the governing body of a municipality may be removed from office by the electors of the municipality provided certain requirements are met.[8] If the requirements are met but the municipal officer does not resign his or her office, a municipal recall election is held for the removal of that officer.[9] A municipal recall election is held in conjunction with a general or special election if such an election is held during the defined timeframe for conducting a recall election.[10]

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.[11]

---

[1] Chapters 97-106, F.S., are known as "The Florida Election Code."
[2] Section 100.3605(1), F.S.
[3] *Id.*
[4] Section 100.3605(2), F.S.; *see also* s. 166.021(4), F.S.
[5] Section 100.3605(2), F.S.
[6] Section 101.75(3), F.S.
[7] Section 101.75(1), F.S.
[8] Section 100.361, F.S.
[9] Section 100.361(4), F.S.
[10] *Id.*
[11] Section 101.21, F.S.

Effect of the Bill

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have the authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates:
- The general election in November of each even-numbered year;
- The first Tuesday after the first Monday in November of each odd-numbered year; or
- The third Tuesday in March of an even-numbered year or odd-numbered year.

If a municipal charter or ordinance requires the municipality to conduct its election in a runoff format, the bill requires the municipality to choose from among the following options:

Initial Election	Runoff Election
Primary Election (Tuesday, 10 weeks prior to General Election)	General Election
Tuesday 10 weeks before the first Tuesday after the first Monday in November of odd-numbered years	First Tuesday after the first Monday in November of odd-numbered years
Tuesday 10 weeks before the third Tuesday in March in an odd-numbered or even-numbered year	Third Tuesday in March in an odd-numbered or even-numbered year

The bill does not require a municipality to alter or amend its charter. Any municipal charter provision that conflicts with the bill is automatically superseded without further action by the municipality. Likewise, any ordinance that conflicts with the bill is automatically superseded without any further action of the municipality.

The provisions of the bill that establish the method of selecting municipal officer election dates does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific time-period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election held in accordance with the provisions of the bill.

The bill also repeals s. 101.75, F.S., which allows a municipality to change municipal officer election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

B. SECTION DIRECTORY:

Section 1 amends s. 100.3605, F.S., relating to the conduct of municipal elections.

Section 2 amends s. 100.361, F.S., relating to municipal recall elections.

Section 3 repeals s. 101.75, F.S., relating to municipal elections.

Section 4 creates an unnumbered section of law requiring the terms of incumbent elected municipal officers to be extended to the next municipal election held in accordance with this bill.

Section 5 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may decrease or increase the cost of conducting elections for certain municipalities. The bill does not require municipalities to amend their charters because all conflicting charter provisions are automatically superseded.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill may require some municipalities to spend funds or take action requiring the expenditure of funds in order to comply with the new election date requirements created by the bill; however, Art. VII, section 18 of the Florida Constitution explicitly exempts election laws from the county/municipality "mandates" provision within that section.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to election dates for municipal
3 office; amending s. 100.3605, F.S.; requiring the
4 governing body of a municipality to determine the
5 dates on which an initial and runoff election for
6 municipal office are held and providing options
7 therefor; preempting to the state the authority to
8 establish election dates for municipal elections;
9 providing construction; amending s. 100.361, F.S.;
10 requiring municipal recall elections to be held
11 concurrently with municipal elections under certain
12 conditions; repealing s. 101.75, F.S., relating to
13 change of dates for cause in municipal elections;
14 extending the terms of incumbent elected municipal
15 officers until the next municipal election; providing
16 an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 100.3605, Florida Statutes, is amended
21 to read:
22 100.3605 Conduct of municipal elections.—
23 (1) The Florida Election Code, chapters 97-106, shall
24 govern the conduct of a municipality's election in the absence
25 of an applicable special act, charter, or ordinance provision.

26 No charter or ordinance provision shall be adopted which
27 conflicts with or exempts a municipality from any provision in
28 the Florida Election Code that expressly applies to
29 municipalities.
30 (2)(a) The governing body of a municipality shall
31 determine if an election for municipal office is held on the
32 same date as the general election, the first Tuesday after the
33 first Monday in November in an odd-numbered year, or the third
34 Tuesday in March in an odd-numbered year or even-numbered year.
35 (b) If a municipal charter or ordinance requires a runoff
36 election for municipal office, the governing body of a
37 municipality shall conduct its elections in one of the following
38 formats:
39 1. The initial election shall be held at the primary
40 election on the Tuesday 10 weeks before the general election and
41 the runoff election shall be held on the same date as the
42 general election.
43 2. The initial election shall be held at an election on
44 the Tuesday 10 weeks before the election held on the first
45 Tuesday after the first Monday in November in an odd-numbered
46 year and the runoff election shall be held at an election on the
47 first Tuesday after the first Monday in November in an odd-
48 numbered year.
49 3. The initial election shall be held at an election on
50 the Tuesday 10 weeks before the third Tuesday in March and the

51 runoff election shall be held at an election on the third
52 Tuesday in March.
53 (c) This subsection does not affect the manner in which
54 vacancies in municipal office are filled or the manner in which
55 recall elections for municipal officers are conducted.
56 (d) Notwithstanding any general law, special law, local
57 law, municipal charter, or municipal ordinance, this subsection
58 provides the sole method for establishing the dates of elections
59 for municipal office in this state. Any general law, special
60 law, local law, municipal charter, or municipal ordinance that
61 conflicts with this subsection is superseded to the extent of
62 the conflict.
63 (3) The governing body of a municipality may, by
64 ordinance, ~~change the dates for qualifying and for the election~~
65 ~~of members of the governing body of the municipality and~~ provide
66 for the orderly transition of office resulting from election
67 ~~such~~ date changes.
68 Section 2. Subsection (4) of section 100.361, Florida
69 Statutes, is amended to read:
70 100.361 Municipal recall.—
71 (4) RECALL ELECTION.—If the person designated in the
72 petition files with the clerk, within 5 days after the last-
73 mentioned notice, his or her written resignation, the clerk
74 shall at once notify the governing body of that fact, and the
75 resignation shall be irrevocable. The governing body shall then

76 proceed to fill the vacancy according to the provisions of the
77 appropriate law. In the absence of a resignation, the chief
78 judge of the judicial circuit in which the municipality is
79 located shall fix a day for holding a recall election for the
80 removal of those not resigning. Any such election shall be held
81 not less than 30 days or more than 60 days after the expiration
82 of the 5-day period last-mentioned and at the same time as any
83 other general, municipal, or special election held within the
84 period; but if no such election is to be held within that
85 period, the judge shall call a special recall election to be
86 held within the period aforesaid.
87 Section 3. Section 101.75, Florida Statutes, is repealed.
88 Section 4. To provide for an orderly transition of office,
89 the term of each incumbent elected municipal officer is extended
90 until the next municipal election held in accordance with this
91 act.
92 Section 5. This act shall take effect July 1, 2020.